

6-29-2007

# Harger v. Teton Springs Appendix Dckt. 33532

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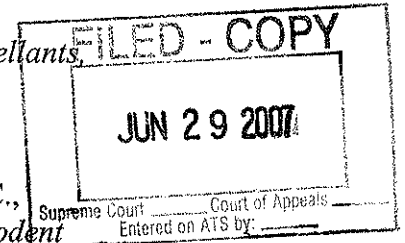
IN THE SUPREME COURT OF THE STATE OF IDAHO

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DONALD and FRANCINE HARGER  
*Plaintiff/Respondents-Counter-Defendants/Cross-Appellants*

v.

TETON SPRINGS GOLF AND CASTING, LLC.,  
*Defendant/Appellant-Counter-Claimant/Cross-Respondent*



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Appeal from the District Court of the Seventh Judicial District  
of the State of Idaho, in and for the County of Teton

Civil No. CV-04-223  
Honorable Brent J Moss, Presiding

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**APPENDIX**  
**TO RESPONDENTS, DONALD AND FRANCINE HARGER'S, BRIEF**

---

Bradley J Williams, ISB No. 4019  
Kimberly D. Evans Ross, ISB No. 6900  
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED  
420 Memorial Drive  
Idaho Falls, ID 83402  
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Facsimile (208) 522-5111

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- Tab 11** January 7, 2004 Teton Springs Contract for Property Sale, Purchaser Vladimie & Pamela Volchko, Seller Teton Springs/V&R Investments. (Clerk's Record Volume III, p. 1271; Trial Exhibit 66).

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**TAB “1”**

AUG 03 2006

TETON CO., ID.  
DISTRICT COURT

THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, TETON COUNTY

**DONALD HARGER, FRANCINE HARGER,**

Plaintiffs,

vs.

**TETON SPRINGS GOLF AND CASTING,  
LLC; V&R INVESTMENTS, LLC; WILLIAM  
REID, and ANTHONY VEST,**

Defendants

Case No.: CV-04-223

ORDER GRANTING NEW TRIAL,  
and  
DISMISSING ALL CLAIMS AGAINST V&R  
INVESTMENTS, LLC.; WILLIAM REID; and  
ANTHONY VEST

On April 11, 2006, following a five (5) day trial, the jury returned its verdict finding that Teton Springs Golf and Casting, LLC, (Teton Springs) had breached a contract with the Hargers relating to the sale and purchase of a lot and model cabin, and awarded Hargers \$178,000.00 in damages. The jury further determined there was no liability on Hargers' claims against the remaining defendants. Subsequently, this Court entered judgment on the jury's verdict and Hargers filed a motion for additur (Rule 59.1, I.R.C.P.) and/or new trial (Rule 59 (a), I.R.C.P.) on the issue of damages. That motion has now been argued, briefed and is submitted to the Court for resolution.<sup>1</sup>

DISCUSSION

The Hargers' request for additur or new trial places the Court in the position of a thirteenth juror. *Blaine v. Byers*, 91 Idaho 665, 670, 429 P.2d 397 (1967). In that regard, the Idaho Supreme Court has stated:

Where a motion for new trial is premised on inadequate or excessive damages, the trial court must weigh the evidence and

<sup>1</sup> Hargers also requested the Court to strike the affidavit from the jury regarding the basis for their verdict. This Court, for purposes of the Hargers' pending motion has not considered that affidavit.

then compare the jury's award to what he would have given had there been no jury.

*Dineen v. Finch*, 100 Idaho 620, 625, 603 P.2d 575 (1979).

Furthermore, the Court, in considering such a motion, is not required to view the evidence most favorably to the non-moving party but must give considerable deference to the jury's findings:

If, having given full respect to the jury's findings, the judge on the entire evidence is left with the definite and firm conviction that a mistake has been committed, it is to be expected that he will grant a new trial.

*Quick v. Crane*, 111 Idaho 759, 763, 727 P.2d 1187 (1986), quoting -- *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 68 S.Ct.525, 92 L.Ed 746 (1948). Even so, the Court should not grant "a new trial unless it appears that a different result would follow a retrial." *Blaine v. Byers*, 91 Idaho at 671.

This Court has again reviewed its trial notes, the jury instructions, the jury verdict, and the authorities cited by each party. That review leads the Court to conclude that the damages awarded to the Hargers were in accord with what this Court would have awarded, but the damages are not consistent with the responses the jury gave on the verdict form. The jury found that Teton Springs breached its contract with the Hargers, and then found that under the contract the Hargers' remedy was not limited to a return of their down payment.

Hargers contend that by these responses the jury should have awarded substantially more than it did i.e., the difference between the fair market value of the property at the time of the breach and the initial purchase price, extra taxes paid for failed 1031 exchange, loss of rebate on cabin purchase price, loss of golf membership, and the value of three (3) weeks free cabin rental value over a period of three years.

Had this Court been the trier of fact it would have found that Hargers breached the contract to purchase when they failed to close following the issuance of the certificate of occupancy, that this breach excused any further performance by Teton Springs, and that Hargers were entitled to the return of their down payment plus interest at the legal rate.<sup>2</sup> The Court

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<sup>2</sup> Based on the damages awarded, it appears this may have been how the jury reached its verdict but lacking a question on the verdict form regarding breach by plaintiffs the amount awarded is inconsistent with any amount proved at trial to have flowed from Teton Springs' breach.

acknowledges, however, that the evidence at trial could sustain the jury's finding that a contract existed between Teton Springs and the Hargers in January of 2004, and that Teton Springs breached that contract.

The jury determined that Teton Springs breached their contract with Hargers. That finding, coupled with their answer that the contract did not limit damages to a return of the down payment, should have entitled Hargers to a minimum award of the difference between the reasonable value of the property at the time of the breach – the \$875,000.00 sale in March of 2004 - and the contract purchase price of approximately \$650,000. The Court has less concern about the remainder of the damages claimed by the Hargers because those claimed damages necessitated a finding that the terms on which they rested were part and parcel of the contract, and there was considerable disparity in the evidence in that regard.

The jury found a contract between Hargers and Teton Springs but that finding begs the question: what were the terms thereof? The only undisputed evidence revealed that Hargers agreed to buy a lot with a model cabin constructed thereon; Teton Springs agreed to sell that property for approximately \$650,000.00; that Teton Springs finished the construction, secured the certificate of occupancy but thereafter sold to another purchaser. Other contract terms for which Hargers sought damages were disputed by Teton Springs. Thus, while Hargers correctly assert they alone provided evidence regarding damages for contract breach, the only damage proven by a preponderance of evidence was the difference in the agreed purchase price and the sales price of the property approximately two months post breach.

This Court is not satisfied that a new trial will alter the ultimate outcome in this case because the amount awarded is approximately what this Court would have awarded on the evidence presented at trial. The Court would have sustained the verdict had the jury awarded Hargers the difference between their purchase price and the fair market value of the lot and cabin as determined by the sale in March of 2004, regardless of their failure to award any of the other damages requested. The Court, however, cannot reconcile the award of \$178,000.00 in view of the uncontradicted evidence of purchase price and value, and on that basis concludes that the interest of justice requires a new trial on all issues between the Hargers and Teton Springs. The



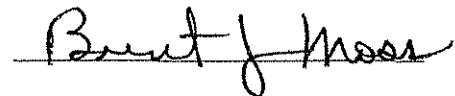
Hargers' claims against V&R Investments, LLC., William Reid, and Anthony Vest shall be dismissed in accord with the jury verdict of April 11, 2006.

NOW THEREFORE,

**IT IS HEREBY ORDERED:**

1. A new trial is ordered on the claims existing on Hargers' claims against Teton Springs Golf and Casting, LLC.
2. The Hargers' claims against V&R Investments, LLC., William Reid, and Anthony Vest are dismissed with prejudice, and these defendants are awarded their costs incurred.
3. The Hargers and Teton Springs shall submit available trial dates to the Clerk of the Court within thirty (30) days of this order.

Dated this 31<sup>st</sup> day of July, 2006  
Brent J. Moss,  
District Judge



**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing ORDER on each of the attorneys named below:

Bradley J. Williams  
420 Memorial Drive  
Idaho Falls, ID 83402

Sean R. Moulton  
P. O. Box 631  
Driggs, ID 83442

John M. Ohman  
P. O. Box 51600  
Idaho Falls, ID 83405-1600

Dated this 3 day of August 2006

  
Deputy Clerk.

**TAB “2”**

# TETON SPRINGS

TETON VALLEY IDAHO

## TETON SPRINGS CONTRACT FOR LOT SALE

EFFECTIVE DATE:

Apr 19, 03

PURCHASER(S):

Don and Traci Harger

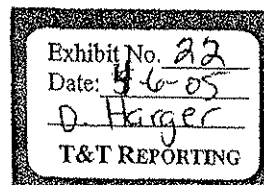
SELLER:

**TETON SPRINGS GOLF & CASTING CLUB, LLC, d/b/a Teton Springs, a Wyoming limited liability company licensed and doing business in Idaho.**

In consideration of the mutual covenants contained herein, and in further consideration of the purchase price specified below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, the below described real estate (hereinafter referred to sometimes as the "Lot" or "Property") subject to the terms, conditions and obligations herein:

- Property:** The Purchaser agrees to buy and the Seller agrees to sell Block/Tract number, 9 Lot 24 of the Teton Springs Community ("Community"), a planned development located in Teton County, Idaho, such Lot being more particularly shown and identified on that certain plat of survey recorded in the Teton County Clerk's Office under Instrument #141372, dated February 13, 2001, as the same has been or may be amended, such plat being incorporated herein, and made a part hereof, by this reference.
- Purchase Price and Method of Payment:** Purchaser represents that Purchaser will have, at the Date of Closing, sufficient cash (together with the loan, if any, described herein) to complete the purchase hereunder. The purchase price of the Property shall be: \$210,000, to be paid as set forth in subparagraph A or B [select A or B, the option not selected is not a part of the Agreement].
  - ☒ **All Cash at Closing.** At Closing, Purchaser shall pay the purchase price to Seller in cash, or its equivalent. Purchaser's obligation to close shall not be contingent upon Purchaser's ability to obtain financing.
  - ☐ **Where New Loan to be Obtained.** This Agreement is made conditional

*DKH*  
*PGH*



upon Purchaser's "ability to obtain" (as defined herein) a loan in the principal amount of 80 percent of the purchase price to be evidenced by a promissory note and secured by a mortgage on the Property. Purchaser shall be obligated to close this transaction if Purchaser has the ability to obtain a loan as set forth above. "Ability to obtain" means that Purchaser is qualified to receive the loan described herein based upon lender's customary and standard underwriting criteria. Proceeds of said loan, together with any balance of the purchase price shall be paid in cash or its equivalent by Purchaser to Seller at closing.

Purchaser agrees to make application for said loan within ten (10) days from date of this Agreement, and pursue said application diligently and in good faith, to execute all papers, to provide all documents, to perform all other actions necessary to obtain such loan and to accept such loan if approved by lender. Should Purchaser not apply for said loan in the time specified above, Seller may declare Purchaser in default and Purchaser shall have five (5) days to cure said default by providing Seller written evidence of formal loan application.

If within thirty (30) calendar days from the date this Contract becomes a binding agreement Seller has not received written notice from Purchaser that Purchaser is unable to qualify for a loan as described herein, then said financing contingency shall be deemed waived by Purchaser and, thereafter, a failure of the Purchaser to close because of the inability to obtain a loan shall be a default by Purchaser. Upon automatic waiver of the contingency, the future inability of the Purchaser to obtain a loan due to the lack of credit worthiness shall be considered a default hereunder. Purchaser acknowledges and represents that he has not relied upon the advice or representation, if any, of Seller or any salespersons representing Seller regarding the type of loan or the terms of any particular loan program to be obtained by Purchaser. Purchaser shall have the responsibility of independently investigating and choosing the lender, type of loan, and said loan program to be applied for by purchaser in connection with this transaction. Purchaser agrees to hold harmless Seller and any salespersons representing Seller, from any claims or loss whatsoever arising out of Purchaser's application and commitment for any loan, and with respect to the terms of instruments evidencing or securing said loan.

3. **Earnest Money:** Purchaser has paid to the Escrow Agent identified below \$ 21,000, as earnest money, which earnest money is to be applied as part payment of the purchase price at time of closing. Escrow Agent shall deposit the earnest money in the escrow account upon receipt. In the event the earnest money check is returned for insufficient funds or otherwise not honored, Seller shall in its discretion have the right to terminate this Agreement. The earnest money may only be disbursed: (a) at closing, (b) upon written agreement signed by all parties, (c) upon Court order, (d) upon breach by any party than to the non-breaching party, (e) upon failure of any contingency herein, or (f) as otherwise set forth herein.

DKH  
RGT

4. **Conveyance of Property:** Seller warrants that it currently has good and marketable, fee simple title to the property and shall convey the property by warranty deed to Purchaser at closing. Good and marketable title means insurable title at normal rates without exception except for permitted title exceptions and preprinted standard title exceptions. Conveyance shall be free of monetary liens or encumbrances, subject to preprinted standard title exceptions and the following permitted title exceptions, to-wit:

- (a) Property taxes for the year of sale;
- (b) Such state of facts as would be disclosed by an accurate survey and inspection of the premises;
- (c) The exact amount of acreage in the property;
- (d) All such other covenants, conditions, restrictions and easements of record as may now affect the Property;
- (e) All those matters shown on the plat of survey referred to above, as has been or may be amended;
- (f) That certain Master Declaration of Protective Covenants for Teton Springs Golf & Casting Club, dated August 15, 2001, as amended (the "Declaration");
- (g) Restrictions relating to building upon or using the Property by virtue of any building or zoning ordinance, restrictive covenants or other law of any entity of government or public authority; and
- (h) Any mortgage placed upon the Property by Purchaser in connection with the closing of the sale of the above-described Lot.

5. **Closing Date:** Closing shall take place on or before 15 JUNE 03. Possession of the Property shall be granted no later than the Closing Date.

6. **Closing Expenses:** Seller shall pay the transfer taxes and recording fees on the deed and for the preparation of the deed. Purchaser shall pay all costs, including any Loan discount percentage, if applicable, associated with the financing aspects of the closing and all other closing costs.

7. **Title Evidence:** A title insurance binder or policy, or title opinion, will be issued to Purchaser in connection with the transaction, at the expense of Seller, and will show that Seller, immediately prior to the conveyance of the Lot to Purchaser, is vested with title to the Lot, subject only to the title exceptions provided for in paragraph 4 of this contract which Purchaser, by execution hereof, specifically approves.

8. **Prorations:** General taxes for the year of closing based on the most recent calendar year assessment, irrigation and drainage assessments, grazing fees, government program payments, personal payments, personal property taxes, prepaid rents, water rights, association fees, dues or assessments, utilities, insurance premiums and interest on encumbrances, if any and if applicable, will be prorated

DKH  
R.H.L.

9. **Seller's Covenants:** Seller will not provide or complete roads, sewer, water, gas, electric, or telephone service, or recreational facilities except:

- (a) The above-described Lot is or will be located on a paved road (for purposes of this Contract, "paved" means concrete or pavement with bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated), which has been or will be built to standards established by the state or the unit of local government in which the Community is located, and the Teton Springs Master Association is obligated to accept the road for maintenance;
- (b) Water lines have been or will be extended to the above-described Lot and service is to be provided by Teton Springs Water and Sewer;
- (c) Sewer lines have been or will be extended to the above-described Lot and service is to be provided by Teton Springs Water and Sewer.
- (d) Electric service lines have been or will be extended to the above-described Lot and service is to be provided by Fall River Electric Company;
- (e) Telephone lines have been or will be extended to the above-described Lot and service is to be provided by Bridge Band Communications, Inc., or a similar provider; and
- (f) Seller does not guarantee the construction of any proposed recreational facilities within or adjacent to the Teton Springs Community other than those recreational facilities as set forth in Exhibit "B" attached hereto.

The Seller represents that it has entered into a Development Agreement for Teton Springs Subdivision, Phase 1, with Teton County for the purpose of guaranteeing the full and satisfactory completion of the improvements identified within items (a) – (e) of this Section 9. In accordance therewith, the Seller has also established an Irrevocable Letter of Credit to the benefit of the Teton County Commissioners in an effort to insure completion of the items set forth within this Section.

With respect to the above-referenced items (b) – (e), please note the following information with respect to rates and fees which are to be paid by the Purchaser:

- A. Teton Springs Water and Sewer will charge an initial hookup fee of \$8,500.00, which will be used for the provision of water meters, inspection and connection and payment of the one-time hookup fee to the City of Victor. Further, wastewater is treated and disposed by the Victor Driggs Regional Wastewater Treatment Plant with monthly pro-rated charges billed to users. A one-time hookup fee of \$3,000.00 will be paid to the City of Victor for wastewater transportation and treatment plant capacity this is a pass through charge included in the \$8,500.00 mentioned above.
- B. Fall River Electric Company will provide electric service at customary and usual rates and fees.
- C. BridgeBand Communications, Inc., or a similar provider, will provide telephone service at customary and usual rates and fees.

OKH BR  
LSD

10. **Completion of Facilities:** The only representations made by Seller with respect to the completion of roads, sewer, water, gas, electric, telephone service and recreational facilities are as set forth in Section 9 and no other representations regarding the same have been made or relied upon by Purchaser. All completion dates for roads, sewer, electric and telephone service and recreational amenities as set forth herein are subject to delays and time extensions caused by acts of God, strikes, or manpower shortages, acts of governmental authorities, labor conditions beyond the control of Seller or any other cause beyond Seller's control or other grounds to establish impossibility of performance in the State of Idaho.

11. **Golf Lot Disclosure:** The Property is located or may be located adjacent to or in close proximity to a Golf Course and Club. Purchaser acknowledges that Purchaser has assessed the location of the Property in relation to the lay out and operation of the Golf Course and Club and acknowledges that owning the Property adjacent to or in close proximity to the Golf Course and Club involves certain risks which may have an impact and effect upon Purchaser's enjoyment of the Property. Purchaser acknowledges that such risks may include, by way of example and not as a limitation, noise associated with the playing of golf and with using the Golf Course and Club facilities; golf balls being hit into Purchaser's Property, with the potential of causing bodily injury or physical damage to any improvements or personality; and golfers entering Purchaser's Property to retrieve errant golf balls. Purchaser assumes all such risks and agrees that neither Seller, the Association, nor any other entity owning or managing the Golf Course or Club, or any portion thereof, shall be liable to Purchaser or to any person claiming any loss or damage, including, without limitation, actual, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof. Purchaser hereby agrees to indemnify and to hold harmless Seller, the Association, or any other entity owning or managing the Golf Course or Club, against any and all claims by Purchaser's guests, invitees, or licensees, of any nature whatsoever, based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof, including, without limitation, all costs of litigation and attorneys fees incurred by Seller, the Association, or any other entity owning or managing the Golf Course or Club, or any portion thereof. Nothing contained in this paragraph 11 shall restrict or limit any power of the Seller, the Association or any other entity owning or managing the Golf Course or Club, or any portion thereof, to change the design of the Golf Course or Club, or of any other portion of the Golf Course or Club and related facilities, and any such change shall not be deemed or considered to have nullified, amended, altered, restricted, or impaired the covenants, obligations, and duties of Purchaser contained herein.

12. **Purchaser's Acknowledgements Regarding Teton Springs Golf Club:**  
(NOTICE: FAILURE TO COMPLY WITH THIS PART COULD PREJUDICE

*with*  
s *DKH* *RSJ*

YOUR ABILITY TO OBTAIN A MEMBERSHIP IN THE TETON SPRINGS GOLF CLUB.)

DKH  
Purchaser's Initials

- (a) Purchaser explicitly acknowledges that **PURCHASER HAS FROM THE DATE HEREOF UNTIL THE LATER OF SIXTY (60) DAYS FROM THE DATE OF CLOSING HEREIN OR FROM COMPLETION OF THE GOLF COURSE TO OBTAIN APPROVAL AND ACQUIRE MEMBERSHIP IN THE TETON SPRINGS GOLF CLUB.** Memberships, which are not acquired by Purchaser by said date, may be offered on a first come, first served basis to other owners and non-owners. Accordingly, owners who do not acquire a membership as of said date may acquire a membership at a later date only if one is then available and only upon payment of the initiation deposit, which is then charged for membership. **NOTICE: FAILURE TO ACQUIRE A MEMBERSHIP AT CLOSING MAY PROHIBIT THE PURCHASER FROM HAVING A MEMBERSHIP AVAILABLE.** Subsequent purchasers of Lots in the Teton Springs Community from members are guaranteed the availability of a membership if the selling member resigns his or her membership and arranges for the subsequent purchaser to acquire such membership. If a membership is not available, the Club of those persons who desire membership in the Club will establish a waiting list. Priority for available memberships will be given to property owners in the Teton Springs Community on the waiting list. The Club may, in its sole and absolute discretion, reserve memberships for sale to future purchasers of property in the Teton Springs Community. Memberships, which are reserved by the Club, will not be considered to be available memberships, and the Club may not be compelled to sell them.
- (b) The persons interested in acquiring a membership in the Club should **IMMEDIATELY UPON THE SIGNING OF THIS CONTRACT** submit a fully executed, completed application for membership in the Club. If the Club accepts the applicant, the Club will send the applicant notice of his or her acceptance. In the event the Club does not act favorably upon a person's application, the Club will so notify the applicant. Within the sixty (60) day period set forth above, the applicant, if accepted in the Club, shall pay to the Club the required initiation deposit, dues and any other charges as may be requested as a part of the membership. Upon payment of all deposits and required charges, the Club will then forward to the applicant a membership card for the member and his or her family members who are entitled to use the Club facilities under the membership, together with any other information deemed pertinent by the Club.
- (c) Purchaser acknowledges that the Club reserves the right, but not the obligation, to convert the Club facilities to an equity membership form of ownership. Initiation deposit members who acquire an equity membership will be entitled to a credit

WMB  
6 DKH RKH



toward the membership contribution required for equity membership in the amount of the initiation deposit, which they previously paid.

13. **Purchaser's Covenants:** The Purchaser covenants and acknowledges that: (a) Purchaser has received copies of the Declaration and agrees to be bound by the terms and conditions of such document; (b) Purchaser or his or her spouse has made a personal, on-the-lot inspection of the above-described Lot prior to the signing of this Contract; (c) Purchaser has received no offer of gifts, trips, dinners, or other such promotional techniques to induce him/her to visit the Teton Springs Community or to execute this Contract, either by direct mail or telephone; (d) Seller acknowledges receipt of a good-faith written estimate of the cost of maintaining the roads over the first ten (10) years of ownership, which estimate is attached as Exhibit "A" hereto and incorporated herein by this reference; and (e) Purchaser has received a good-faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.
14. **The Teton Springs Master Association, Inc.:** There has been or will be created the Teton Springs Master Association, Inc. Purchaser shall be a member of the Association and Purchaser's Property shall be subject to assessment by the Association, which assessment is for the purposes set forth in the Declaration. Purchaser hereby acknowledges that it is aware of the rights of the Association to levy and enforce assessments against it and Purchaser agrees to pay promptly all such assessments, which are properly made against him by the Association.
15. **Architectural Requirements:** Architectural approval and control requirements and restrictions are set forth in the Declaration. Such provide that no original construction, improvements, buildings, structures, or development of any kind whatsoever shall commence or be carried out on any lot until approved in writing by the Development Review Committee. Purchaser agrees that the actual construction on the property will have no material variation from the plans approved by the Development Review Committee unless the Development Review Committee shall have also approved such variations in writing. The Development Review Committee may grant or deny approval of Purchaser's plans on any grounds, including purely aesthetic considerations. All modifications, additions or alterations made on or to existing residential units or structures must obtain the approval of the Development Review Committee, as that term is defined in the Declaration.
16. **Default:** If Purchaser fails to perform his or her obligation under this Contract or to close the sale provided herein, Seller may, at its option, elect to enforce this Contract by declaring this Purchase Contract in default and retain any and all Earnest Money as full liquidated damages, in which event the parties will be released from any further obligation or liability to each other. Purchaser and Seller agree that the exact amount of Seller's actual damages would be impossible to calculate and that such liquidated damages are reasonable. In the event that this

WMC  
7 DKH LGH

sale fails to close due to default on the part of the Seller, or inability of Seller to deliver "good and marketable fee simple title" to the Lot, then upon written notice from Purchaser, Seller shall return all Earnest Money, and the parties shall be released from any and all other further obligations hereunder. Neither Purchaser nor Seller shall have any further rights or remedies on account of any default except as stated in this paragraph.

17. **Condition of Property:** Purchaser and Seller hereby agree that Purchaser shall buy the Property in an "as is" condition, and Seller has not made any commitments or accepted any obligations for further work on the Property other than as expressly set forth herein. Purchaser acknowledges that Seller has not made any pledges, covenants or commitments in regard to the development of the Teton Springs Community which has induced a Purchaser of the Property to purchase said Property except as stated in this Contract.
18. **Sole Agreement:** This Contract supersedes any and all understandings and agreements between the parties and constitutes the sole and entire contract between the parties. No oral statements or representations whatsoever shall be considered a part hereof. Any modifications must be in writing and acknowledged by the parties hereto.
19. **Binding Effect:** This Contract is binding upon the heirs, personal representatives, successors and permitted assigns of the parties.
20. **Nonassignability:** Purchaser's interest in this Contract may not be transferred or assigned, in whole or in part, without the prior written consent of Seller. In the event that Purchaser assigns or transfers, or attempts to assign or transfer, his or her interest hereunder without Seller's written consent having first been obtained, Seller may, at its option, treat such event as a default by Purchaser hereunder, and shall not be obligated to recognize the Assignee or the Transferee.
21. **Survival of Closing:** The terms and conditions of this Contract shall survive the Closing and delivery of the warranty deed. Purchaser, on behalf of himself and his successors in title, agrees that in the event of any litigation to enforce this Contract, or in the event Seller is voluntarily or involuntarily made a part to any litigation concerning this Contract, Purchaser shall protect and hold the Seller harmless from any and all costs in connection with such litigation, including reasonably attorney's fees and court costs incurred by the Seller.
22. **Notices:** Notices hereunder shall be in writing and shall be delivered by hand, courier or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party as first set forth above. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or courier delivery or on the date received.

WUP  
8 DKH [Signature]

23. **Idaho Law:** This Contract and all relationships between the parties hereto shall be construed, interpreted and enforced in accordance with the laws of the State of Idaho.
24. **Time of Essence:** Time is of the essence in this Contract, except as otherwise specifically provided.
25. **Severability:** The provisions of this Contract are intended to be independent. In the event that any provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Contract.
26. **Full Knowledge:** Purchaser and Seller acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions and the effect of all the provisions of this Contract and every part of the Declaration, the exhibits thereto, the amendments thereto, the By-Laws, the Supplemental Declaration, the Articles of Incorporation of the Association and all parts of the Purchaser's Package
27. **Real Estate Brokerage Commission:** Seller shall be responsible for all real estate commissions in connection with the transaction described herein to the Broker and to any other agents, or co-brokers only if they are listed below. In no event shall Seller have any obligation to pay any real estate commission except in the event of the consummation of the closing of this transaction pursuant to the terms of this Contract. Neither Seller nor Broker has acted as agent in this transaction for the Purchaser. The co-broker listed below, if any, shall receive a total commission at Closing of 0% of the Purchase Price. Purchaser acknowledges that Purchaser has not contracted, negotiated, or otherwise dealt with any real estate broker not specifically identified in this Contract in connection with any aspect of this transaction. Purchaser agrees to indemnify and to hold Seller harmless from any claim made by any real estate broker or any other person asserting any claim for any commission, fee, salary, or other payment for any services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction, except for any claim for such services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction by any person specifically identified herein as a real estate broker.
28. **Disclaimer:** Seller and Purchaser acknowledge that they have not relied upon the advice or representation, if any, of Broker (or Broker's associated salespersons) relative to any consequences of this Contract and the sale of the Property, the purchase and ownership of the Property, the condition of the Property, the availability of utilities to the Property, or the investment potential or resale value of the Property. Seller and Purchaser both acknowledge that if such matters are of concern to them, they have sought and obtained independent advice. Purchaser

9 DKH LGZ

acknowledges that Broker (or Broker's associated salespersons) are representatives of the Seller and are not acting by or for Purchaser in any capacity.

29. **Revocation:** This Contract may be revoked at the option of Purchaser until midnight of the seventh (7<sup>th</sup>) day following the signing of this Contract. This provision is non-waivable
30. **Definitions:** The words used in this Contract shall have the same meaning as set forth in the Declaration and any amendment applicable thereto, as recorded or to be recorded in the land records of Teton County, Idaho, which, by this reference, are incorporated herein.

**Special Stipulations:** Home site, Tract Lot 23 is purchased under the terms of the attached model Cabin Purchase Agreement Exhibit "C" and Cabin Model Lease Agreement Exhibit "D"

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals and executed this contract in duplicate on the dates set forth by the signature (the contract date being the date that the last party signs this agreement).

Print Purchaser's Name:

DONALD K. HARGER

Irene Frances Harger (SEAL)

\_\_\_\_\_  
(SEAL)

PURCHASER:

Donald K. Harger

Irene Frances Harger

Print Purchaser's Address and Phone Numbers:

P.O. Box 2826, JACKSON, WY 83001  
Address

Signed as to Purchaser this 19<sup>th</sup>  
day of APRIL, 2003.

Address

(307) 733-4750

Home Phone FAX (307) 739-4750  
CELL (307) 730-4750

Business Phone

Facsimile

Print Purchaser's County of Residence:

TETON County, WY

Seller's Address:

1 Teton Springs Parkway  
Victor, ID 83455

SELLER:

TETON SPRINGS GOLF &  
CASTING CLUB, LLC,  
d/b/a/ Teton Springs a  
Wyoming limited liability  
company.

By: W. Scott

Its Managing Member

Warranty Deed should be prepared as

\_\_\_\_\_ joint tenants with rights  
of survivorship

\_\_\_\_\_ tenants in common only

\_\_\_\_\_ corporate / partnership

ACCEPTED BY SELLER this 21<sup>st</sup>  
day of April, 2000.

The Escrow Agent is \_\_\_\_\_  
whose address is \_\_\_\_\_

CO BROKER:

N/A  
Print Name

Address

Address

Business Phone

Facsimile

By: \_\_\_\_\_  
Authorized Agent

BROKER:

Print Name

Address

Address

Business Phone

Facsimile

By: \_\_\_\_\_  
Authorized Agent

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EXHIBIT "A"

TETON SPRINGS GOLF & CASTING CLUB

CONTRACT FOR SALE - ADDENDUM

RE: Paragraph 13(d), Good Faith Estimate, Road Maintenance

FROM: Teton Springs Golf & Casting Club, LLC  
d/b/a Teton Springs

To: Don and Fran Harger  
(Purchaser)

RE: Tract 9 Lot 24

The estimated cost of maintaining the roads within the Teton Springs Community over the first ten years of ownership is approximately \$300,000.00. Said expense is to be incurred by the Teton Springs Master Association, Inc. which will collect monies through the levy of assessments in accordance with the Declaration. Purchaser will only be responsible for their share of the expenses incurred. The developer will pay for the shares held by unsold platted lots.

SELLER: Teton Springs Golf & Casting Club, LLC d/b/a Teton Springs

By: Wain Hail  
Its Authorized Representative Chief Operating Officer

PURCHASER:

Donnell K. Harger

EXHIBIT "C"

### Model Cabin Purchase

#### Summary:

The Buyer purchases one of the four cabins Teton Springs is presently building for use as a model. Teton Springs leases the cabin back from the buyer at a lease rate that provides enough cash to cover the buyers mortgage costs. Insurance, homeowner association dues, and utilities are also paid by Teton Springs. The term of this lease is two years unless mutually extended by the parties. The models are not to be used for lodging by anyone. They are used as a visual aid to assist other cabin buyers. The furniture in the model cabin is the property of Teton Springs but can be purchased by the buyer at Teton Springs' cost of replacement.

#### Property Descriptions and Pricing:

##### Lost River II - Lot 24:

This is a 3 bedroom, 3 1/2 bath, cabin of approximately 2200 sq ft. It has a large open kitchen / great room (approx. 25 x 30) with a cathedral ceiling. The lot faces the Teton Mountain Range and overlooks lakes and the golf course in between. Price \$634,700

Gros Ventre II - Lot 23: This is a 4 bedroom, 4 bath, cabin of approximately 2140 sq ft. The main level is on the second floor and provides elevated views out the back, of the same scene as on lot 24 above. Price \$634,000.

Bitterroot II - Lot 20: This is a 4 bedroom, 4 1/2 bath, cabin of approximately 2350 sq ft. It is built on a sloping lot and has a daylight basement opening onto a patio. The lot has similar views as the above lots. Price \$674,000.....

Windriver I - Lot 6: This is a 3 bedroom, 3 1/2 bath, cabin of approximately 2000 sq ft. It is a two-story home with the living area on the second floor. The lot is a corner lot which backs up to a small lake / stream. Price \$569,600. Lower level floor plan in accordance with flat homesite.

#### Terms:

1. Golf memberships purchased in connection with the models will be available at \$16,000 vs. the normal price of \$30,000, until Aug. 1, 2003.
2. Teton Springs will provide, or pay for cabin insurance, home owner association dues, all utilities, landscape maintenance, cleaning and property maintenance during the term of the lease.
3. The buyer will pay for taxes and golf dues (if a membership is purchased).
4. Neither Teton Springs nor the buyer will use the cabin for overnight accommodation during the two-year lease.
5. The buyer may purchase the furniture installed in the model at the end of the lease period. The price will be no more than the cost to Teton Springs of furnishing a similar model. At the present time these costs range between \$40,000 - \$60,000. Normal kitchen appliances approved as a part of all cabin offerings are the property of the buyer and are not furniture.
6. If the buyer sells the property during the lease, the buyer agrees to buy another similar cabin property from Teton Springs within 30 days of the sale, at the price in effect at that time.

3 years  
for  
LOP  
9/22/0

7. Buyer receives Cabin Up-grades of T&G ceiling, and Slab Granite kitchen counters at no additional charge.
8. Teton Springs will thoroughly clean the cabin (including touchup painting and carpet cleaning) at the end of the lease period.

### **Cabin Rental Program**

#### **Summary:**

The cabin rental program allows the buyer to build his chosen cabin on the lot of his choice and receive a guaranteed income to help offset costs. The buyer buys a cabin lot, selects and builds a cabin (by Teton Springs), puts it in the Teton Springs Rental Program and then receives either \$6,000 per quarter or 50% of the gross rental receipts (the selection must be made in advance and can only be changed annually). The buyer must purchase Teton Springs approved furnishings. Teton Springs pays the costs of maid service, advertising, minor maintenance and any renter related damages. The buyer pays all other costs associated with normal ownership.

#### **Special Terms:**

1. A golf membership, purchased in connection with the lot, is available for \$16,000 vs. the normal \$30,000 until August 1, 2003.

### **Ranch Estate Lots 1,2, & 3 – The Horse Lots**

#### **Summary:**

Lot 1 is the third largest lot in Teton Springs (2.4 acres), is well off the highway, and is next to the Equestrian Facility and about 10 acres of pasture leased by Teton Springs. Price \$275,000 (probably the best deal of any lot).

Lot 2 is almost as large (2.22 acres). Price \$290,000.

Lot 3 is 1.84 acres and has an open space next to it. Price \$285,000.

The same two "Special Terms" for the Cabin Rental Program apply to these lots.



Exhibit "D"

Teton Springs, LLC  
Cabin Model Lease Agreement

RECEIVED from Teton Springs, LLC herein after referred to as "Tenant", the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), from \_\_\_\_\_, herein after referred to as "Owner".

1. **TERM:** The term hereof shall commence on approximately \_\_\_\_\_, and continue (check one of the two following alternatives): (1) \_\_\_\_\_ until the morning of approximately \_\_\_\_\_, for total rent of \$ \_\_\_\_\_. (2) Tenant and Owner may re-negotiate lease extension at end of term. Tenant agrees monthly lease payment of \$ \_\_\_\_\_.
2. **RENT:** Rent shall be \$ \_\_\_\_\_ per month, payable in advance, upon the 1<sup>st</sup> day of each calendar month to Owner or his authorized agent, at the following address: \_\_\_\_\_ or at such other place as may be designated by Owner from time to time. In the event rent is not paid within five (5) days after due date, Tenant agrees to pay a late charge of \$25.00 plus interest at 1.5% per month on the delinquent amount payable to Owner. Tenant further agrees to pay \$25.00 for each dishonored bank check payable to the Owners. The late charge period is not a grace period, and Owner is entitled to make written or verbal demand for any rent unpaid on the second day of the rental period. Any unpaid balances remaining after termination of occupancy are subject to 1.50% interest per month or the maximum rate allowed by law, whichever is less.
3. **UTILITIES:** See Attachment A.
4. **USE:** The premises shall be used exclusively as a model home.
5. **ANIMALS:** No animals are allowed on the premises without the prior consent of the owner. If acceptance is granted for animals, Tenant understands and agrees that all pet hair and dander must be removed and additional time will be required upon the departure cleaning.
6. **HOUSE RULES:** Tenant agrees to abide by any and all house rules, whether promulgated before and after the execution hereof, including, but not limited to, rules with respect to noise, odors, disposal of refuse, animals, parking and use of common areas. Tenant shall not have a waterbed without prior consent of the Owner.
7. **ORDINANCES AND STATUTES:** Tenants shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the use of the premises.
8. **ASSIGNMENT AND SUBLETTING:** Tenant shall not assign this agreement without prior written consent of the owner.
9. **MAINTENANCE, REPAIRS, OR ALTERATIONS:** Tenant acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Owner or Owner's agent may at any time give Tenant a written and/or videotaped

inventory of furniture and furnishings in good condition and repair, unless he objects thereto in writing within five (5) days after receipt of such inventory. Tenant shall, at his own expense, and at all times, therein and shall surrender the same, at termination hereof, **IN AS GOOD AND CLEAN CONDITION AS RECEIVED**. Tenant shall be responsible for any damage caused by his negligence and that of invitees and guests. Tenant shall not paint, paper or otherwise redecorate or make alterations to the premises without the prior written consent of the Owner. Whether property is occupied or unoccupied, Tenant shall irrigate and maintain any surroundings grounds including lawns and shrubbery, and keep the same clear of rubbish or weeds, if such grounds are a part of the premises and are exclusively for the use of the Tenant. Tenant shall not commit any waste upon said premises.

10. **INVENTORY:** Owner or owner's agent may be at any time give Tenant a written or videotaped inventory of furnishings, fixtures and equipment on the premises and Tenant shall be deemed to have possession of all said furnishings, fixtures and equipment in full, in good condition and repair, unless he objects thereto in writing within five (5) days after receipt of such inventory. Owner acknowledges that Tenant has arranged for unit furnishing and until Owner arranges for purchase of such furnishing, has exclusive ability to replace or change out furnishing. Wall covering, window treatments and standard finish items as agreed at purchase may not be changed.

11. **DAMAGES TO PREMISES:** If the premises are so damaged by fire or from any other cause as to render them uninhabitable, then either party shall the right to terminate this Lease as of the date on which such damage occurs, through written notice to the other party, to be given within fifteen (15) days after occurrence of such damage, except that should such damage or destruction occur as the result of the abuse or negligence of Tenant, or its invitees, then Owner only shall have the right to termination. Should this right be exercised by either Owner or Tenant, then rent for the current month shall be prorated between parties as of the date the damage occurred and any prepaid rent and unused security deposit shall be refunded to Tenant. If this Lease is not terminated, then Owner shall promptly repair the premises and there shall be a proportionate deduction of rent until the premises are repaired and ready for Tenant's occupancy, unless damages were caused by Tenant's negligence. The proportionate reduction shall be based on the extent to which the making of repairs interfaces with Tenant's reasonable use of the premises.

12. **ENTRY AND INSPECTION:** Owner or Owner's Agent shall have the right to enter the premises: (a) in case of emergency; (b) to inspect for cleanliness, maintenance and to make sure that the terms of the lease are being followed; (c) to make necessary or agreed repairs, decorations, alterations, improvements supply necessary or agreed services, exhibit the premises to prospective or actual purchasers, mortgages, tenants, workmen, or contractors; (d) when Tenant has abandoned or surrendered the premises. Except under (a) and (d), entry may not be made other than during the normal business hours, and not without less than 24 hours prior notice to Tenant.

13. **INDEMNIFICATION:** Owner, Owner's Agent and its employees shall not be liable for any damage or injury to Tenant, or any other person, or to any other property, occurring on the premises or any part thereof, or in common areas thereof, unless such damage is the proximate result of the gross negligence or willful unlawful act of Owner, Owner's Agent or its employees. Tenant agrees to hold Owner harmless from any claims for damages, no matter how caused, except for injury or damages for which Owner is legally responsible.
14. **PHYSICAL POSSESSION:** If Owner is unable to deliver possession of the premises at the commencement hereof, Owner shall not be liable for any damage caused thereby, nor shall this agreement be void or voidable, but Tenant shall not be liable for any rent until possession is delivered. Tenant may terminate this agreement if possession is not delivered within \_\_\_\_ days of the commencement of the term hereof.
15. **DEFAULT:** If Tenant shall fail to pay rent when due, or perform any term hereof, after not less than seven (7) days written notice of such default given in the manner required by law, the Owner, at his option, may terminate all rights of Tenant hereunder, unless Tenant, within said time, shall cure such default. If Tenant abandons or vacates the property, while in default of the payment of rent, Owner may consider any property left on the premises to be abandoned and may dispose of the same in any manner allowed by law. In the event the Owner reasonably believes that such abandoned property has no value, it may be discarded. All property on the premises is hereby subject to a lien in favor of Owner for the payment of all sums due hereunder, to the maximum extent allowed by law.
16. **OWNER PRIVILEGE:** During the term of this agreement \_\_\_\_ year(s), on a six (6) month advance reservation notice Owner will be guaranteed three (3) weeks or twenty-one (21) days of lodging provided by Teton Springs at a NO rental fee. Customary charges for housekeeping and incidental costs will apply.

In the event of a default by Tenant, Owner may elect to (a) continue lease in effect and enforce all his rights and remedies hereunder, including the right to recover the rent as it becomes due, or (b) at any time, terminate all of Tenant's rights hereunder and recover from Tenant all damage he may incur by reason of the breach of the lease, including the cost of recovering the premises, and including the worth at the time of such termination, or at the time of an award if suit be instituted to enforce this provision, of the amount by which the unpaid rent for the balance of the term exceeds the amount of such rental loss which the Tenant proves could be reasonably avoided.

17. **ATTORNEY'S FEES:** In any legal action brought by either party to enforce the terms hereof or relating to the demised premises, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee. Disputes to be addressed in Teton County Idaho courts under Idaho Law.

18. **WAIVER:** No failure of Owner to enforce any term hereof shall be deemed a waiver. The acceptance of rent by Owner shall not waive his right to enforce any term hereof.
19. **NOTICES:** Any notice which after either party may give or is required to give, may be given by mailing the same, certified mail, to Tenant at the premises or to the Owner at the address shown herein or at such other place as may be designated by the parties from time to time.
20. **HOLDING OVER:** Any holding over after expiration hereof, with the consent of Owner shall be construed as a month-to-month tenancy in accordance with the terms hereof, as applicable, until either party shall terminate the same by giving the other party **thirty (30) days written notice** delivered by certified mail.
21. **TIME:** Time is of the essence of this agreement.        **ADDITIONAL TERMS AND CONDITIONS** is set forth at the bottom of this page, and Attachment A.
22. **COUNTERPARTS, FACSIMILIES:** This instrument may be executed in multiple counterparts, each of which may be an original, and all of which together shall constitute one and the same instrument. A telefax counterpart hereof executed by a party, shall have the same force and effect as an original counterpart hereof executed by such party.

**ENTIRE AGREEMENT:** The foregoing constitutes the entire agreement between the parties and may be modified only in writing by both parties. The following Exhibits, if any, have been made a part of this agreement before the parties' execution hereof: Attachment A and Tenant Application.

The undersigned Tenant hereby acknowledges receipt of a copy hereof.

Dated: \_\_\_\_\_

By \_\_\_\_\_

**ACCEPTANCE**

\_\_\_\_\_  
Owner Date

\_\_\_\_\_  
Tenant Date  
Tenant Address:

Teton Springs, LLC  
Attachment A

**UTILITIES AND SERVICES ADDENDUM**

Utilities and services shall be handled as follows: (cross out non-responsible party where applicable).\*

- Telephone: Owner / Tenant
- Satellite / Cable Television: Owner / Tenant
- Propane / Utility Bills: Owner / Tenant
- Snow Plowing of Driveway(s): Owner / Tenant
- Shoveling of the Roof: Owner / Tenant
- The property must be plowed and shoveled whether occupied or unoccupied by the tenant. Snow levels shall not prevent access to property.
- Snow plowing of the city streets shall be paid for by the HOA dues and Tenant agrees to pay for the plowing of the driveway. Property will be kept accessible year-around whether occupied or unoccupied by the Tenant.
- Garbage collection and payment will be the responsibility of: Owner / Tenant
- Yard maintenance shall be provided and paid for by: Owner / Tenant. Lawn care must be provided at least weekly whether property is occupied or unoccupied by Owner.
- Tenant will provide a weekly cleaning of the property at Tenant's expense. Upon departure, tenant will leave the property in as good and clean condition as when arrived.

OTHER: Tenant agrees to pay insurance, maintenance and all utilities during terms of this lease and extensions. Owner is responsible for property tax.

**TAB “3”**

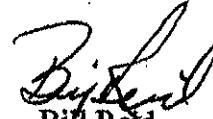
# TETON SPRINGS

TETON VALLEY IDAHO

Apr. 19 2003

Don and Fran Harger

According to the terms of our agreement your purchase of Tract 9 Lot 24 for \$210,000 will be subject to a 10% rebate of \$21,000 payable by Teton Springs upon the closing of the lot.



Bill Reid  
Chief Operating Officer

JIM GILL  
One Teton Springs Parkway  
Victor Idaho 83455  
Phone: 208-787-8000 Fax: 208-787-8007  
jgill@tetonsprings.com

H/A0055

**TAB “4”**



# TETON SPRINGS

TETON VALLEY IDAHO

SHOULD BE MAY 3, 2003

Apr 3, 2003

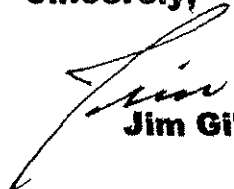
**Dear Fran and Don,**

**It is with great pleasure that I remind you of our promise to give you one year's free golf membership dues if you referred someone to us who purchased property.**

**You have the options of beginning your year when the course opens this August, waiting until the start of the full season in 2004 when all 27 holes are open, or as your contract allows, starting your membership period at the conclusion of the model lease back contract.**

**Thank you very much for introducing Dick and Annis Allen to Teton Springs.**

**Sincerely,**



**Jim Gill**

JIM GILL  
One Teton Springs Parkway  
Victor Idaho 83455  
Phone: 208-787-8000 Fax: 208-787-8007  
jgill@tetonsprings.com

H/A0042

**TAB "5"**

# TETON SPRINGS

TETON VALLEY IDAHO

Apr. 26, 2003

Dear Don and Fran Harger,

The following items have been identified for clarification by both you and the Allens. Please let me know if further explanation is needed.

Teton Springs will return your deposit of \$21,000 if after showing proof of "diligently and in good faith" applying for and pursuing a loan for Tract 9 Lot 24. You are unable to secure financing.

Teton Springs will hold you're pricing of a Resident Golf Membership at \$16,000 for the term of the lease back agreement.

During the term of the lease back agreement you can have personal use of one of our rental properties for up to three weeks a year.

The \$8,500 hook up fee mentioned in the Contract for Lot Sale Para 9.A. is included in your \$634,700 purchase price.

At the conclusion of your Model Cabin lease back term of three years you are to be included in our Cabin Rental Program for two years which allows for \$6,000 per quarter in guaranteed income or 50% of gross rental receipts. (See attachment C of 19 Apr. contract).

Option B of the contract signed Apr. 19 page 1 is the option selected by you. Agreement is conditional upon your "ability to obtain a loan".

This letter supercedes my letter of Apr 25, 2003.

Sincerely,

  
Jim Gill  
Teton Springs

JIM GILL  
One Teton Springs Parkway  
Victor Idaho 83455  
Phone: 208-767-8000 Fax: 208-767-8007  
jgill@tetonsprings.com

Exhibit No. 25
Date: 4-6-05
D. Harger
T&T REPORTING

H/A0039

**TAB “6”**

# TETON SPRINGS

TETON VALLEY IDAHO

Apr. 30, 2003

Dear Don and Fran,

This letter is in response to your request for clarification of terms of your agreement to purchase the Lost River II Model Cabin on Tract 9 lot 24.

Teton Springs agrees that you may have one closing on both the lot and the structure at the conclusion of the construction of the cabin, if you will deposit 20% of the total cost (\$634,700) with Teton Springs to be used by Teton Springs between the date of the deposit and closing. The amount due at closing would be \$634,700, less \$21,000 in escrow with First American Title, less \$126,940 deposited with Teton Springs, less the normal closing costs due from the buyer.

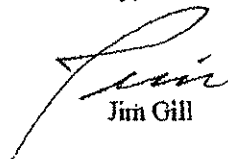
You will receive under the terms of our agreement \$3,000 per month to as a lease payment from Teton Springs for the use of your cabin as a model.

A provision of the Teton Springs Property Management Agreement will stipulate that for two years you will be guaranteed \$2000 in monthly rental income. Any revenues over \$2000 per month will be split 50/50 between yourself and Teton Springs and appropriate expenses are to be deducted from your share.

\* At the end of the 3 year lease back period, if Teton Springs should need to continue using the model, Teton Springs will continue the \$3000 per month payment and that period will be reduced from the rental period.

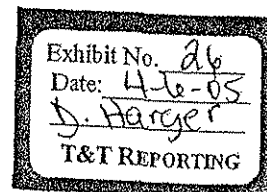
I hope I have addressed all your concerns and we can begin to plan that big house warming party for you and the Allens.

Sincerely,



Jim Gill

JIM GILL  
One Teton Springs Parkway  
Victor Idaho 83455  
Phone: 208-787-8000 Fax: 208-787-8007  
jgill@teton springs.com



H/A0040

**TAB “7”**

# TETON SPRINGS

TETON VALLEY IDAHO

## Model Cabin Sale Agreement

30th AUGUST

This Agreement, made and entered into this 26<sup>th</sup> day of June, 2003 by and between Teton Springs Golf and Casting Club hereinafter referred to as SELLER and Don and Fran Harger hereinafter referred to as BUYER.

Witnesseth:

1. BUYER agrees to pay SELLER Six Hundred Thirty Four Thousand Seven Hundred Dollars (\$634,700) for a Locati Architects Lost River II located on Tract 14 Lot 24.
2. Closing shall take place upon the completion of Model construction and furnishing.
3. SELLER agrees that BUYER is welcome to inspect the construction of the Lost River II at any time and in such a manner as to not interfere with the progress of construction.

4. SELLER ACKNOWLEDGES RECEIPT OF 20% DOWN PAYMENT BY BUYER.

5. SELLER ACKNOWLEDGES Buyer will utilize a FOR BUYER'S

Don Harger Fran Harger

FOR Teton Springs ;

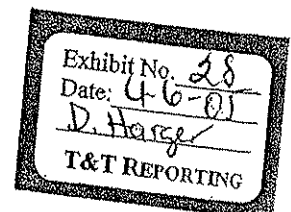
Anthony J. Vest  
Managing Member  
6/26/03

DONALD K HARGER

FRANCE FRANCES HARGER

ANTHONY J Vest  
Managing Member

JIM GILL  
One Teton Springs Parkway  
Victor Idaho 83455  
Phone: 208-787-8000 Fax: 208-787-8007  
jgill@tetonsprings.com



TS-0046

**TAB “8”**

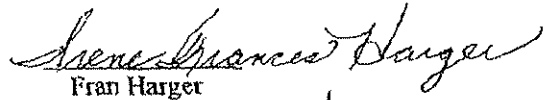


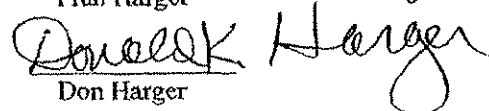
May.6, 2003

Samantha Hires  
Alliance Title and Escrow Corp.  
PO Box 664  
Driggs, Id. 83442

Dear Sam,

Please release the \$21,000 you currently hold in escrow for the purchase of Tract 9 Lot 24 to Teton Springs. Make the check payable to Teton Springs LLC. This money is to be used as part of my 20% deposit on Lost River II Model Cabin total purchase price of \$634,700.

  
Fran Harger

  
Don Harger

TTS085

Donald K. Harger

Post Office Box 2826  
Jackson, Wyoming 83001

MAY 7, 2003

DEAR MS. HIRES:

WE ARE ALLOWING OUR  
DEPOSITS ON LOTS 23 AND 24 TO  
BE USED BY TETON SPRINGS IN  
ORDER TO FACILITATE A  
COMBINED PURCHASE OF A LOT  
AND BUILDING WITHOUT SEPARATE  
APPRAISALS AND CLOSING COSTS.

OUR CLOSE FRIENDS, THE  
ALLENS, ARE REQUESTING  
THE SAME TREATMENT.

PLEASE CALL ME IF  
YOU HAVE QUESTIONS. AT  
(307) 733-4750 / FAX (307) 739-  
4750.

SINCERELY,

Donald K. Harger

# TETON SPRINGS

TETON VALLEY IDAHO

July 11, 2003

Don and Fran Harger,

This letter confirms that you have deposited \$126,940 with Teton Springs. This is in accordance with our agreement that with a 20% deposit on your total purchase price of \$634,700 you may close on both the lot and cabin at the same time.



Bill Reid  
Chief Operating Officer

JIM GILL  
One Teton Springs Parkway  
Victor Idaho 83455  
Phone: 208-787-8000 Fax: 208-787-8007  
jgill@tetonsprings.com

TTS067

**TAB "9"**

1 to that.  
2 Q And your understanding is that they had no  
3 agreement as of the end of December; is that true?  
4 A As of the end of December? At least by  
5 January, because they were demanding yet more things.  
6 Q And when you spoke to Mr. Hess there were two  
7 occasions, on the 5th and 6th; correct, according to  
8 your notes?  
9 A Yes.  
10 Q And your purpose in calling Mr. Hess was to ask  
11 are the Hargers serious about these new demands, are  
12 they going to concede and Mr. Hess told you they are  
13 not going to concede to any one of those demands; is  
14 that your testimony?  
15 A That's probably a fair characterization of the  
16 conversation.  
17 MR. WILLIAMS: Thank you. No further  
18 questions, Your Honor.  
19 THE COURT: Anything else?  
20 MR. OHMAN: Mr. Moulton, will you be  
21 disappointed if I have no further questions?  
22 THE WITNESS: Not one.  
23 MR. OHMAN: All right. I have none.  
24 THE COURT: You're free to go. Thank you.  
25 Mr. Ohman, you may call your next witness.

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1 MR. OHMAN: Thank you, Your Honor. The  
2 Defendants rest their case, sir.  
3 THE COURT: Thank you, Mr. Ohman.  
4 Mr. Williams, you may proceed with rebuttal.  
5 MR. WILLIAMS: Thank you, Your Honor. At this  
6 time we would call Mr. Keith Harger. I will have my  
7 associate, Ms. Ross, conduct the questioning in this  
8 part of the trial. She's going to give me a break.  
9 THE COURT: All right. Mr. Harger, if you'll  
10 please come up. If you'd please face our Clerk and  
11 raise your right hand.  
12  
13 KEITH CARL HARGER,  
14 Called as a witness by and on behalf of the Plaintiff  
15 on rebuttal, after having been duly sworn, took the  
16 stand and testified as follows:  
17  
18 THE COURT: Please come and be seated.  
19  
20 DIRECT EXAMINATION  
21 BY MS. ROSS:  
22 Q Good afternoon.  
23 A Good afternoon.  
24 Q Mr. Harger, can I get you to state your  
25 complete name for the record, please.

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1 A It's Keith Carl Harger.  
2 Q And what is your relationship to the Plaintiffs  
3 in this case, Don and Fran Harger?  
4 A I'm their son.  
5 Q And what is your occupation, Mr. Harger?  
6 A I'm an architect.  
7 Q And how long have you been an architect?  
8 A I began practicing in the architectural field  
9 in 1985 as I was attending architecture school.  
10 Architectural school is a five-year degree. I went to  
11 Montana State University. I worked my way through  
12 school. I couldn't afford to just go consecutively.  
13 So starting in 1985 I would work for six months, go to  
14 school for six months, work for six months or nine  
15 months, it kind of varied, but I've been actively  
16 involved in the profession since 1985 with the  
17 exception of one year that I worked as a carpenter.  
18 Q And are you currently employed?  
19 A I am.  
20 Q Where do you work?  
21 A I actually have a small office of my own in  
22 Jackson.  
23 Q And as an architect, if you would please, just  
24 give the jury a brief description of what your role  
25 would be in the construction of a new home.

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1 A Well, typically the jobs I do, I do a lot of  
2 high end residential jobs. There's been some  
3 testimony trying to differentiate between the case of  
4 a custom home and the house in question, which is a  
5 model home. Most of mine are custom homes where I and  
6 the owner's agent, I work with him regularly through  
7 the design and take their program, build exactly the  
8 home they want and then help them locate a contract --  
9 find a contractor, reach an agreement on the price,  
10 then I act as their agent through the construction  
11 process to ensure the house is done according to plans  
12 and I guess that's about it. I'm not sure.  
13 MR. OHMAN: Your Honor, may I ask a question in  
14 aid of an objection?  
15 THE COURT: Go ahead.  
16  
17 QUESTIONS IN AID OF OBJECTION  
18 BY MR. OHMAN:  
19 Q Mr. Harger, good afternoon.  
20 A Good afternoon.  
21 Q I understand, of course, by the questions thus  
22 far that you're being asked questions regarding your  
23 areas of expertise. Is it your understanding you're  
24 being called here today to testify as an expert  
25 witness?

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1 MS. ROSS: Objection.  
2 THE COURT: Hold on.  
3 MR. OHMAN: We share the objection, Your Honor,  
4 there's an order from Your Honor --  
5 THE COURT: He needs to answer the question  
6 first. Go ahead and answer the question.  
7 THE WITNESS: Actually, I came over yesterday  
8 to listen to testimony to just kind of provide more  
9 support to my parents. I understood that the trial  
10 was going to be about one area. I heard some  
11 testimony yesterday that I guess at best I could say  
12 was a gross mischaracterization --  
13 MR. OHMAN: Your Honor, may we just ask that he  
14 be responsive to the question?  
15 THE COURT: Well --  
16 MR. OHMAN: Well, let me interpose my  
17 objection.  
18 THE WITNESS: I'm sorry, I can answer that  
19 question.  
20 THE COURT: Hang on.  
21 (Discussion held off the record.)  
22 THE COURT: Okay. Go ahead. Do you need to  
23 ask the question, Mr. Ohman?  
24 MR. OHMAN: First, Your Honor, by reason of  
25 colloquy and by consent of Counsel, we'd like the

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1 record to indicate that pursuant to His Honor's  
2 earlier order, this witness and others are not being  
3 called as an expert witness in this case; is that  
4 correct?  
5 THE WITNESS: That is.  
6 THE COURT: Fact witness only. Go ahead with  
7 your next question.  
8  
9 DIRECT EXAMINATION (Cont'd)  
10 BY MS. ROSS:  
11 Q So during the course of your interaction with  
12 homeowners as an architect, you would be conversant  
13 with materials such as specifications, punch lists,  
14 retainage amounts, you're familiar with those terms,  
15 you understand them?  
16 A Those are the tools of my trade.  
17 Q Did you ever personally inspect Lot 24 of Teton  
18 Springs Subdivision that your parents were attempting  
19 to purchase?  
20 A Yes.  
21 Q And when was the first time that you visited  
22 that property?  
23 A I guess I should say the first time that I  
24 visited the property was not really an inspection.  
25 The first time was just to come see the property my

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1 parents were excited about, this house that they had  
2 bought. It was early summer, probably May or early  
3 June. May, it was kind of muddy still, and just kind  
4 of walk the grounds. It was early in the process on  
5 the house. I wasn't really doing a critical  
6 inspection.  
7 Q So that was -- your testimony is that that was  
8 mostly just a visit?  
9 A Correct.  
10 Q During that visit did you engage anyone that  
11 was an employee of Teton Springs or was a construction  
12 worker on that project?  
13 A Not that I talked with.  
14 Q You didn't talk to anyone at the project site?  
15 A I might have said hello.  
16 Q You didn't engage in any conversation to  
17 suggest changes on the home?  
18 A No.  
19 Q When was your next visit to this site?  
20 A The next visit was late summer, probably around  
21 September, mid-August/September.  
22 Q What was the status of the construction of the  
23 home at that time?  
24 A It was largely framed and dried in, dried in,  
25 that's the term we use, the roof is on, the windows

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1 are kind of in place and some of the exterior  
2 materials are going up and at least part of the  
3 systems were roughed, electrical wiring and some of  
4 the plumbing and the sheetrock was beginning to go up.  
5 Q What was the purpose of that visit?  
6 A That particular visit, actually my parents  
7 requested that I come and look at a few particular  
8 instances where there were some things that weren't  
9 working in the house and see if I could suggest a  
10 possible solution.  
11 Q And tell the jury, if you would, please, what  
12 those specific items were.  
13 A There were four items basically, four major  
14 items that come to mind and excuse my kind of legal  
15 talk, you know, if I might point to some drawings.  
16 MR. OHMAN: We object, Your Honor. I think it  
17 would be contrary to His Honor's earlier orders and  
18 we're certainly not --  
19 THE COURT: Yeah, unless the drawings are  
20 admitted into evidence, we can't consider the  
21 drawings. Go ahead with your next question.  
22 THE WITNESS: Well, I could go on without them.  
23 THE COURT: Well, why don't we just go in the  
24 other room and discuss it there for a few minutes.  
25 (Recess)

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1 THE COURT: Back on the record again. The case  
2 of Harger versus Teton Springs. As I told you before,  
3 ladies and gentlemen, occasionally I put the referee  
4 shirt on and when we go through a trial there are  
5 certain rules that have to be complied with that have  
6 been established over a long time and if an issue  
7 comes up I've got to resolve sometimes I have to have  
8 an instant replay like they do on the television, look  
9 at it a little closer and make sure that I'm at least  
10 making the best decision I can make on it. I've done  
11 that, that's what the attorneys for is to make sure  
12 they call that to my attention and they've done their  
13 job well.

14 Mr. Harger will testify, he will not testify as  
15 an expert witness. He will testify as a fact witness  
16 and so his testimony will be limited to what he saw  
17 and what he observed and what he may have told his  
18 parents based on what he saw.

19 Now, having said that, Mr. Williams, you may  
20 proceed.

21 MR. WILLIAMS: Ms. Ross, Your Honor.

22 THE COURT: Oh, I'm sorry. Ms. Ross, go ahead.

23 MS. ROSS: Thank you.

24 Q (By Ms. Ross) Okay. Mr. Harger, where we left  
25 off was, best as I can recall, your visit to the cabin

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1 as a request of your mother some time during the  
2 sheetrocking stage; right?

3 A Sure.

4 Q Okay. And can you identify for the jury,  
5 please, specifically what the purpose of that visit  
6 was for you?

7 A As I said, there were a number of issues she  
8 was concerned about and she wanted me to look at them,  
9 the things that didn't work and she wanted me to  
10 propose a possible solution to resolve those.

11 Q And go ahead and tell them what those items  
12 were.

13 A The first and most significant was a  
14 constriction at the stairway that Mrs. Harger -- it's  
15 hard to say without saying something about expert  
16 knowledge.

17 THE COURT: You can say what you observed.

18 THE WITNESS: In this particular case the  
19 stairway ran up the side of a living room/dining room  
20 area and opened the railing on one side and a wall on  
21 the other side. At the bottom of that stairway there  
22 was a mule post, which is a vertical member that  
23 supports the railing and the banister at the open  
24 site. Directly opposite that were some log ends from  
25 a log intersection of a wall that came through from

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1 the back side. Those two things coincided created a  
2 constriction in the stairs which was too narrow.

3 Q (By Ms. Ross) Let's move to there. Did you  
4 make a recommendation to your parents at that time?

5 MR. OHMAN: Objection.

6 THE COURT: He can indicate what he told his  
7 parents.

8 THE WITNESS: Well, obviously the reason I was  
9 there was that here is a problem, do you have any  
10 suggestions to fix that and, yes, I did come up with a  
11 suggestion for this and for all the other items I  
12 looked at during that day.

13 Q (By Mr. Ross) What was the suggestion that you  
14 made --

15 MR. OHMAN: We'd like to have a continuing  
16 objection as to the recommendations he made in his  
17 capacity as an architect.

18 THE COURT: He can indicate what he recommended  
19 and talked to the builder about. Go ahead.

20 THE WITNESS: This, as I said, was at the  
21 bottom of the stairs. I suggested that they take the  
22 mule post, that's that vertical railing support that I  
23 talked about, slide it up through the stairs a couple  
24 steps so that if you had a diagonal dimension between  
25 those log ends that projected into the stairway and

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1 the log column that was this mule post, technically  
2 the stair would be wide enough and then if you were to  
3 do that you kind of at the end you would have to turn  
4 slightly diagonal to go through that for that to  
5 really worked. If you went straight, it would still  
6 be the same narrow, constricted look.

7 So in order to do that we suggested taking the  
8 last two treads of the stair and wrapping them around,  
9 just adding a little bit of material at the end so  
10 that you could kind of spill out sideways out of the  
11 stair at that angle that was made to make that stair  
12 function the way it was intended.

13 Q (By Ms. Ross) And did you have occasion to  
14 discuss that recommendation with Monte Sutton?

15 A In fact, he was there when we were talking  
16 about it.

17 Q And what was Monte's reaction to your  
18 recommendation?

19 A I think he thought it was a great idea. It was  
20 simple. As I said, it was simply moving one element,  
21 adding a little bit of material before the finished  
22 treads went on the stair and that, compared to the  
23 option of having to redo something else much more  
24 severe and much more structural, it was a very simple  
25 solution and he recommended that to management.

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1 Q What were the other problems that you addressed  
2 on that visit -- or that you observed on that visit  
3 for the purpose of that visit?

4 A There were two instances where there were  
5 closets that were drawn in the plans and as they were  
6 framed and sheetrocked could not function as closets.  
7 One was in the same area, the bottom of the stairs  
8 near the entry, it was a coat closet as you would  
9 typically expect, and it was just by the door, a pair  
10 of doors that used one door -- I don't know if I could  
11 show the construction documents, or if I have to do  
12 this verbally?

13 Q If you can, just try to describe for me what  
14 you observed.

15 A Okay. So this closet backed up to a garage.  
16 The closet was drawn and intended to be a typical  
17 two-foot close where you have a clothes rod and  
18 hangers hanging in that for cloaks and coats. At some  
19 point a decision had been made to put some mechanical  
20 systems, either plumbing or a heating vent in the back  
21 of this closet and, as I said, even if this was  
22 against the exterior --

23 MR. OHMAN: Objection, Your Honor.

24 THE COURT: Just a minute. Against the  
25 exterior. Go ahead.

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1 THE WITNESS: The back wall of this closet was  
2 the common wall between the garage, which sometimes  
3 went unheated in the inside space, so whether we put  
4 these things in the garage space -- this is what they  
5 told me, somebody told me they put them in the closet  
6 so that they would not be subject to the cold and  
7 conditions such as that. So as a result, when you  
8 open the door the closet was about a foot deep, you  
9 couldn't put clothes in it.

10 Q (By Ms. Ross) Okay. Did you make a  
11 recommendation to your parents with regard to this?

12 A We talked about several options, what it would  
13 take to fix and obviously it would have been a huge  
14 delay. It would have required reforming so I  
15 suggested to my parents why don't you just put some  
16 coat hooks, a little board -- have them put a board  
17 and hooks so you can at least get three or four coats  
18 in there and it could still function as at least a  
19 place for coats, if not a closet, and they accepted  
20 that. That compromised that solution.

21 Q Okay. What was the next item that you observed  
22 during that visit?

23 A It was a similar case with another closet  
24 upstairs in one of the bedrooms. The bedrooms in this  
25 house are framed into kind of the roof of the house,

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1 which is vaulted ceilings, I guess. The closet was  
2 off to one side and you can understand as the roof  
3 goes down the header gets smaller and smaller, there  
4 was a wall that partitioned the room from the closet  
5 that may have been seven feet at the point of the  
6 wall.

7 If you opened that close for this bedroom, they  
8 had just recently framed up and had this sheetrock on  
9 the wall, the back of that closet, and again this is  
10 what I was told by Monte at the time. The reason they  
11 had chosen the location of the height of that wall was  
12 because it would be a typical height somebody might  
13 expect inside a closet, you know, like six feet high  
14 or seven feet high. The problem is to get the wall  
15 that high, again, there wasn't enough depth within  
16 that closet to put hangers and to use it as a closet.  
17 So in this case I suggested, because this is a bedroom  
18 and because it wasn't a major delay in construction  
19 because they had just framed it, I said this room  
20 would work better if you push that wall backwards so  
21 that the depth could be used for a closet, even though  
22 it will be low we could at least put a clothes rod at  
23 some point in that closet and you could hang shorter  
24 clothes. You couldn't hang long cloaks and garments,  
25 but you could still at least hang things in that

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1 closet, and if somebody wanted room for taller things  
2 they'd have to put an armoire in a closet. And,  
3 again, that's to my understanding, to my recollection  
4 that's what Monte chose to do in repairing that one.

5 The last issue that I looked at during that  
6 visit was, it had to do with some casement windows  
7 over the kitchen sink. The kitchen windows are  
8 windows that hang on the side and they crank open.  
9 Because the sink and part of the kitchen was in a bay,  
10 it was kind of projected out from the rest of the  
11 house. There was a roof that came down over that and  
12 there was this wall and the windows got close to that  
13 roof, when you tried to open the windows it bumped  
14 into the roof and couldn't open, so they asked for a  
15 suggestion there. That one I said, well, this is  
16 obviously a less -- more of an issue of aesthetics  
17 than functionality. So one thing we could do is  
18 deplete it we could at least open the windows a couple  
19 inches and get a little air in there or if you're  
20 willing to go a more difficult avenue you could  
21 replace that casement windows with a window that slid  
22 and it could pull open. And I believe I said I don't  
23 have a, you know, I'm not going to tell you it should  
24 be this way. This is something you guys can work out  
25 with my parents. My understanding, though, is that he

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1 did opt to put a slide window.  
 2 Q Were there any other items that you addressed  
 3 or observed or recommended or changes during that  
 4 visit?  
 5 A No. Actually that's pretty much it.  
 6 Q Do you recall what day of the week that visit  
 7 occurred?  
 8 A No. I know that was the one time that I went  
 9 during a weekday when the crew was outside. The rest  
 10 of the time I was (inaudible).  
 11 Q Was that a reason you had occasion to discuss  
 12 your recommendations with Monte Sutton?  
 13 A Correct. Again, that was the reason I went was  
 14 to discuss those things with him.  
 15 Q Did you have any other conversations or any  
 16 type of engagement at all with any other employee of  
 17 Teton Springs or construction worker on the site that  
 18 day?  
 19 A No.  
 20 Q Was construction stopped or impeded in any way  
 21 as a result of the recommendations you made that day?  
 22 A Not any more than what I just indicated. I  
 23 believe on the window there was some trim on the  
 24 outside windows, exterior, that might have had to have  
 25 been removed in order to replace that window and then

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1 reinstalled.  
 2 Q When was the next visit you made to the cabin?  
 3 A I didn't get back again until winter and my  
 4 father was compiling a punch list and wanted me to  
 5 look at his punch list items with him and --  
 6 Q Is that what precipitated your visit was a  
 7 request from your father to assist with his punch  
 8 list?  
 9 A Yes. The punch list and they had one other  
 10 concern that there was a large icicle ice stand  
 11 forming in front of the house, between the front door  
 12 and the garage and was spilling down the side of the  
 13 building. It started to run out in front of the  
 14 garage. It was touching the wall and was a fairly  
 15 massive piece of ice so they wanted me to look at that  
 16 and see if I could offer some -- tell them what was  
 17 going on.  
 18 Q Okay. To make sure I understand, visually  
 19 you're talking about an ice structure that's vertical?  
 20 A Correct.  
 21 Q That runs from where to where?  
 22 A From the roof. I'm trying not to get too  
 23 technical about why it happens.  
 24 Q Just describe it for me. What was it?  
 25 A It was a large chunk of ice that was forming on

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1 the roof. There was an entry gable at the front of  
 2 the house, another one at the garage. Between this  
 3 there was a large -- where snow had been melting off  
 4 the roof, pooling up into a pool, refreezing and  
 5 creating a dam and then spilled over and created a  
 6 large column of ice that was coming down all the way  
 7 from the roof to the ground.  
 8 Q What were the dimensions of this column of ice?  
 9 A As I recall, it was from eve to the ground  
 10 probably ten feet, something at that point or a little  
 11 more and the diameter was a foot and a half or more.  
 12 Q That's big ice.  
 13 A It's significant ice.  
 14 Q So as best as you can recall, when was the time  
 15 of this last, this third visit?  
 16 A I believe it was December, there was snow.  
 17 What time in December, I don't know.  
 18 Q And when you went to the house was your father  
 19 with you?  
 20 A Yes.  
 21 Q And what did you observe during that visit?  
 22 A Well, the first thing was the ice. Of course  
 23 we talked about that on the outside. He asked why  
 24 this was happening. I very clearly know why it was  
 25 happening but I'm not allowed to say that.

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1 Q What recommendation did you make to him with  
 2 regard to the ice column on their porch?  
 3 A Well, the problem that was causing it can be  
 4 distinguished from what potential problems that it  
 5 might cause in terms of the damage it might do to the  
 6 house. So at this point the things that I believe  
 7 were causing --  
 8 MR. OHMAN: Objection, Your Honor.  
 9 THE COURT: Just tell him what you told him to  
 10 do.  
 11 Q (By Ms. Ross) Go ahead. Just tell him what  
 12 you told him to do.  
 13 A Well, I have to say at this point the house was  
 14 very far long. It would not have been possible  
 15 without --  
 16 MR. OHMAN: Objection, Your Honor,  
 17 nonresponsive.  
 18 THE COURT: We're walking a fine line here and  
 19 I realize you're going to have to walk it and I  
 20 sympathize with the problem.  
 21 THE WITNESS: I told them --  
 22 MS. ROSS: Just a second, Keith. Let me help  
 23 you out here.  
 24 Q (By Ms. Ross) At what stage of construction  
 25 was the home during this third visit?

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1 A At this point it was being trimmed up and  
2 finished.  
3 Q Okay. And you had to make a recommendation to  
4 your parents based on the fact that it was at the  
5 stage of construction it was; correct?  
6 A Yes.  
7 Q Now you apparently had several options with  
8 regard to recommendations you could have made;  
9 correct?  
10 MR. OHMAN: Objection. Leading.  
11 THE COURT: It is, but it's preliminary. Go  
12 ahead.  
13 THE WITNESS: I --  
14 Q (By Ms. Ross) You had several options?  
15 A I had several options.  
16 Q Ranging from expensive to inexpensive?  
17 A Yes, and really only one of those options would  
18 have allowed the sale to go through and the contract  
19 to be completed whether --  
20 MR. OHMAN: Objection, Your Honor, voluntary  
21 testimony. Nonresponsive.  
22 THE COURT: Sustained. Just answer the  
23 question that you're asked. Go ahead and ask it  
24 again.  
25 THE WITNESS: I told them, I specifically made

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1 a recommendation after weighing potential options. I  
2 told them they should ask for a longer warranty on the  
3 house in case this ice dam in this area should at a  
4 later time create problems in the house. The reason I  
5 told them to ask for a longer warranty should be  
6 pretty obvious. The house wasn't even going to be  
7 inhabited for the first three years. That was a major  
8 thing --  
9 MR. OHMAN: Objection. Nonresponsive.  
10 THE COURT: Sustained.  
11 Q (By Ms. Ross) Let me go ahead and cue you with  
12 some questions and we'll stay on track. Just to  
13 clarify for the jury, if you would tell us  
14 specifically what the recommendation was for your  
15 parents, that you made to your parents in order to  
16 address the problem with the column of ice on the  
17 porch.  
18 MR. OHMAN: Objection. Asked and answered.  
19 THE COURT: Sustained.  
20 Q (By Ms. Ross) What other problems did you  
21 observe on that day?  
22 A The rest of the visit, as I said, was to look  
23 at my father's punch list and to go through it with  
24 him. For a large amount of time that I was there I  
25 was helping him go through this punch list and to kind

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1 of to simplify it a little bit.  
2 Q What was your purpose in doing that?  
3 A The purpose was they were getting -- this was  
4 going to be something they were to present at their  
5 closing conversations, their final contractual  
6 agreement conversations. Just to help them distill it  
7 to a point where -- it's just human nature that people  
8 don't want to read a long list and just make it  
9 simple, make it real. For instance, as I said, this  
10 was in the trim out phase of the house. One of the  
11 things that was going on was the casings were being  
12 put around the interior doors and windows. In order  
13 to get this done quickly it was prefinished trim. It  
14 was being nailed up with pneumatic nail guns.  
15 Sometimes when you've got a nail gun or a compressor  
16 starts to lose air, nails don't go completely into the  
17 wood, so there were several instances where the nails  
18 were sticking out of the trim an eight of an inch or a  
19 quarter inch. My father's list ticked on through and  
20 it kind of listed an upper east bedroom, middle  
21 window, right side trim, set of nails. I kind of  
22 helped him to say, just as a general thing to say  
23 finish nails in trim, that kind of thing. As well as  
24 to see if I saw anything else that he might have  
25 missed.

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1 Q Okay. So as you went through the house you  
2 helped him craft a workable punch list and then you  
3 also observed other problems with the house when you  
4 went through?  
5 MR. OHMAN: Objection. Compound question and  
6 leading.  
7 THE COURT: Go ahead and ask it again.  
8 Q (By Ms. Ross) Okay. After you finished  
9 helping your father reorganize his punch list, what  
10 other things did you observe in the house during that  
11 visit?  
12 A This is the first time that I had -- an  
13 opportunity that I had to go really -- that I'd taken  
14 to really go through the house and look at it.  
15 At some point I went through every bedroom and  
16 other things and I noticed that there was a single  
17 floor register for the heating system in this bedroom,  
18 a single, very small register. My thought was this  
19 doesn't seem right, this doesn't seem adequate.  
20 Q Let me stop you there. Are there mechanical  
21 drawings for this cabin?  
22 A There are. As a matter of fact, at that point  
23 I asked to see them.  
24 Q Have you read those drawings?  
25 A I have.

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1 Q And did you tell your father that you had a  
2 concern about the heat registers in this house?

3 A I did. I --

4 MR. OHMAN: Objection, Your Honor, he's  
5 volunteering testimony. There's no question.

6 THE COURT: I know this seems like you're in a  
7 strait jacket, but we just have to go through it  
8 carefully here, so listen careful for the next  
9 question, then you can respond.

10 Q (By Ms. Ross) What did you recommend to your  
11 parents as a solution to what you perceived was wrong  
12 with the heat registers?

13 A I recommended that they have an expert  
14 mechanical engineer come in and look at the system as  
15 it was built because that system was entirely  
16 different than that that was drawn and to see if it  
17 was adequate. If it was adequate, then to go on with  
18 the closing and to just live with it and not worry  
19 about the change.

20 Q Did your parents accept that recommendation?

21 A Yes, they did.

22 Q Is there anything else that you observed during  
23 that visit to the cabin?

24 A Yes, there is. At this point after seeing that  
25 and noticing that the house was not built the way it

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1 was drawn, I started to look at it more closely.

2 The next thing I noticed is -- I'll stick with  
3 the measurements, but there was a log truss on the  
4 exterior of the house outside of the gable. This log  
5 truss carried a large ridge beam that spanned the  
6 length of the living area, carried one end of it. As  
7 I was looking at the drawings and looking at that  
8 truss I noticed they were different. There were  
9 elements that were removed that were not installed in  
10 that truss that were drawn on the drawings. It was a  
11 combination of a log truss with steel mounts.

12 Q And you could perceive this visibly?

13 MR. OHMAN: Your Honor, if I may interpose an  
14 objection. I think they're now breaching His Honor's  
15 admonition regarding testifying in an expert's  
16 capacity.

17 THE COURT: Well, we're close. He can testify  
18 on the truss what he observed. I'll let him do that.

19 Q (By Ms. Ross) Okay. And what did you  
20 recommend to your parents with regard to that  
21 observation?

22 A I recommended that they talk -- well, first of  
23 all, that they simply ask the construction foreman if  
24 there had been any record of a conversation between  
25 the builder and the architect or the engineer saying

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1 these were acceptable to this home. And if that did  
2 happen, I said then let's talk to the architect or the  
3 engineer himself and see if they have any concerns  
4 about the way that it's built different than what's in  
5 the drawings.

6 Q And did your parents accept your recommendation  
7 to check as to whether or not this change had been  
8 architect approved?

9 A Yes, they did.

10 Q You mentioned, Keith, that you heard Tony Vest  
11 testify in court yesterday; did you not?

12 A I did.

13 Q Do you remember him testify that there are  
14 mechanical drawings for this home?

15 A I did.

16 Q Is that true?

17 A It is not.

18 Q Were there any other problems that you observed  
19 during your visit in December?

20 A Not that I directly observed and --

21 MR. OHMAN: He's answered, Your Honor.

22 THE COURT: Okay. Better ask another one.

23 Q (By Ms. Ross) You heard Mr. Vest testify  
24 yesterday that -- well, let me back up. During this  
25 visit did you have any conversation with your father

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1 about the screwjacks for this home?

2 A I did.

3 Q And you made recommendations to him one way or  
4 the other with regard to how to deal with the  
5 screwjacks that were supporting --

6 MR. OHMAN: Objection, Your Honor.

7 Q (By Ms. Ross) The screwjacks in the hall;  
8 correct?

9 THE COURT: He can answer yes or no.

10 THE WITNESS: Can you ask the question again?

11 Q (By Ms. Ross) And ultimately did you make  
12 recommendations to your parents about how to address  
13 your concerns about the screwjacks for the home?

14 A I did.

15 Q And you heard Tony Vest testify yesterday that  
16 your parents requested to basically tear the house  
17 apart in order to observe these screwjacks and to get  
18 to them; did you not?

19 A I did.

20 Q Is that the recommendation that you made to  
21 your parents?

22 A No, and that actually doesn't make any sense at  
23 all. Can I explain why that doesn't make sense?

24 Q I don't think you can. You heard Tony testify  
25 yesterday -- or did you hear Tony testify yesterday

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1 that he knew at the point that your parents began  
2 discussing screwjacks with Teton Springs that they had  
3 no intention of going through with the deal; did you  
4 not?  
5 A Can you ask me that again?  
6 Q Did you hear him testify about that yesterday,  
7 that at the point that your parents began having  
8 conversations with Teton Springs about recommendations  
9 for the screwjacks that they knew they had no  
10 intention of going through with the deal; do you  
11 remember that testimony from yesterday?  
12 A I do.  
13 Q Were you part of the negotiations or  
14 recommendations that your parents prepared in  
15 connection with the screwjacks to the house?  
16 MR. OHMAN: Objection. Ambiguous.  
17 THE COURT: If you can answer, go ahead and  
18 answer it.  
19 THE WITNESS: I was not part of the  
20 negotiations. I was the impetus for some of the items  
21 that they fought for.  
22 Q (By Ms. Ross) You were aware that your parents  
23 were communicating with Teton Springs in connection  
24 with the screwjacks?  
25 A Yes.

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1 Q Around that time frame did you understand that  
2 it had become your parents' intentions not to go  
3 through with this contract?  
4 A Would you ask me again? I'm sorry.  
5 Q Around the time frame that this was happening  
6 was it your parents' intention not to go through with  
7 this contract?  
8 A Absolutely not. All these things I was doing  
9 was trying to help them find a way to get through.  
10 Q Were your recommendations given for the purpose  
11 of intention to expedite the closing on the house?  
12 A Exactly.  
13 Q Did you hear Mr. Vest testify yesterday that at  
14 the close of your inspection with your parents in  
15 December that they communicated to Teton Springs that  
16 they were very dissatisfied with this cabin? Is that  
17 true? Did you hear them testify about that yesterday?  
18 A I heard them say that.  
19 Q Is that true?  
20 A No.  
21 Q What, in fact, did your parents say, if  
22 anything, that you know to Teton Springs with regard  
23 to the results of that inspection?  
24 A As to the point of all the -- the things that I  
25 had been feeding them and the recommendations I had

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1 made were to protect their interest and obviously  
2 continue to go through with the closing of the house  
3 and they were still planning to do that.  
4 Q Did you cause any disruptions to the  
5 construction on the house during your last visit in  
6 December?  
7 A No. I believe it was a weekend.  
8 Q I'm sorry?  
9 A I think that was a weekend or holiday because  
10 nobody was there. We were able to walk around freely  
11 and look at the house, so it couldn't have interfered  
12 with anything.  
13 Q Did you engage or encounter or speak with any  
14 other Teton Springs employee on that visit?  
15 A (No audible response.)  
16 Q How did your parents react --  
17 THE COURT: Hold on. I didn't hear a response.  
18 THE WITNESS: I said no.  
19 THE COURT: Okay. The reason I'm asking,  
20 because if I don't hear it it's probably not on the  
21 record.  
22 Q (By Ms. Ross) Keith, how did your parents  
23 react when they got the news that their contract for  
24 this cabin had been canceled?  
25 A They were heartbroken. They had spent a year

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1 dreaming about this and spent time on it. They were  
2 very disappointed.  
3 Q Were they surprised?  
4 A Yes.  
5 MS. ROSS: I have no more questions.  
6 THE COURT: Thank you. Mr. Ohman.  
7 MR. OHMAN: Thank you, Your Honor.  
8  
9 CROSS EXAMINATION  
10 BY MR. OHMAN:  
11 Q Good afternoon, Mr. Harger.  
12 A Good afternoon.  
13 Q I have just a couple of questions for you. You  
14 are trying to help your parents here today; aren't  
15 you?  
16 A Yes, I am.  
17 Q And you knew the subject home that was being  
18 contemplated for purchase by your parents was a model  
19 home as opposed to a custom home; did you not?  
20 A Yes, I did.  
21 MR. OHMAN: Thank you, sir. I have nothing  
22 additional.  
23 THE COURT: Anything else?  
24 MS. ROSS: No.  
25 THE COURT: Thank you. You may step down. You

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**TAB “10”**

# TETON SPRINGS

TETON VALLEY IDAHO

## TETON SPRINGS CONTRACT FOR PROPERTY SALE

EFFECTIVE DATE:

Nov 21, 2003

8/30/03

PURCHASER (S):

Don and Fran Harger

SELLER:

Teton Springs Golf and Casting Club, LLC, d/b/a  
Teton Springs, a Wyoming limited liability  
company licensed and doing business in Idaho.

In consideration of the mutual covenants contained herein, and in further consideration of the purchase price specified below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, the below described real estate subject to the terms, conditions and obligations herein:

1. **Property:** The Purchaser agrees to buy and the Seller agrees to sell the premises commonly known as 11 Warm Creek Lane and legally described as Tract number, 9 Lot, 24 23 with improvements located in the Teton Springs Community ("Community"), a planned development located in Teton County, Idaho, such Lot being more particularly shown and identified on that certain plat of survey recorded in the Teton County Clerk's Office under Instrument #141372, dated February 13, 2001, as the same has been or may be amended, such plat being incorporated herein, and made a part hereof, by this reference.

2. **Purchase Price and Method of Payment:** Purchaser represents that Purchaser will have, at the Date of Closing, sufficient cash (together with the loan, if any, described herein) to complete the purchase hereunder. The purchase price of the Property shall be: \$ 634,700 648,492 to be paid as set forth in subparagraph A or B [select A or B, the option not selected is not a part of the Agreement] and as shown below:

- ☐ A. All Cash at Closing. At Closing, Purchaser shall pay the purchase price to seller in cash, or its equivalent. Purchaser's obligation to close shall not be contingent upon Purchaser's ability to obtain financing.
- X B. Where New Loan to be Obtained. This Agreement is made conditional upon Purchaser's "ability to obtain" (as defined herein) a loan in the principal amount of 80 percent of the purchase price to be evidenced by a

Don & Fran  
\$653,901  
Dick & Annis

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promissory note and secured by a mortgage on the Property. Purchaser shall be obligated to close this transaction if Purchaser has the ability to obtain a loan as set forth above. "Ability to obtain" means that Purchaser is qualified to receive the loan described herein based upon lender's customary and standard underwriting criteria. Proceeds of said loan, together with any balance of the purchase price shall be paid in cash or its equivalent by Purchaser to Seller at closing.

Purchaser agrees to make application for said loan within ten (10) days from date of this Agreement, and pursue said application diligently and in good faith, to execute all papers, to provide all documents, to perform all other actions necessary to obtain such loan and to accept such loan if approved by lender. Should Purchaser not apply for said loan in the time specified above, Seller may declare Purchaser in default and Purchaser shall have five (5) days to cure said default by providing Seller written evidence of formal loan application.

If within thirty (30) calendar days from the date this Contract becomes a binding agreement Seller has not received written notice from Purchaser that Purchaser is unable to qualify for a loan as described herein, then said financing contingency shall be deemed waived by Purchaser and, thereafter, a failure of the Purchaser to close because of the inability to obtain a loan shall be a default by Purchaser. Upon automatic waiver of the contingency, the future inability of the Purchaser to obtain a loan due to the lack of credit worthiness shall be considered a default hereunder. Purchaser acknowledges and represents that he has not relied upon the advice or representation, if any, of Seller or any salespersons representing Seller regarding the type of loan or the terms of any particular loan program to be obtained by Purchaser. Purchaser shall have the responsibility of independently investigating and choosing the lender, type of loan, and said loan program to be applied for by purchaser in connection with this transaction. Purchaser agrees to hold harmless Seller and any salespersons representing Seller, from any claims or loss whatsoever arising out of Purchaser's application and commitment for any loan, and with respect to the terms of instruments evidencing or securing said loan.

3. **Earnest Money:** Purchaser has paid to Teton Springs \$ 21,000 + 126,940 as earnest money, which earnest money is to be applied as part payment of the purchase price at time of closing.
4. **Other Terms And/Or Conditions:** this Agreement is made subject to the following special terms, considerations and /or contingencies which must be satisfied prior to closing

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5. **Items Included & Excluded In This Sale:** All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include all attached floor coverings, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, irrigation fixtures and equipment, all water systems, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the price and condition of the property are acceptable.

(a) ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE:

CLOTHES WASHER  
CLOTHES DRYER

(b) ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:

6. **Conveyance of Property:** Seller warrants that it currently has good and marketable, fee simple title to the property and shall convey the property by warranty deed to Purchaser at closing. Good and marketable title means insurable title at normal rates without exception except for permitted title exceptions and preprinted standard title exceptions. Conveyance shall be free of monetary liens or encumbrances, subject to preprinted standard title exceptions and the following permitted title exceptions, to-wit:

- (a) Property taxes for the year of sale;
- (b) Such state of facts as would be disclosed by an accurate survey and inspection of the premises;
- (c) The exact amount of acreage in the property;



- (d) All such other covenants, conditions, restrictions and easements of record as may now affect the Property;
- (e) All those matters shown on the plat of survey referred to above, as has been or may be amended;
- (f) That certain Master Declaration of Protective Covenants for Teton Springs Golf & Casting Club, dated August 15, 2001, as amended (the "Declaration");
- (g) Restrictions relating to building upon or using the Property by virtue of any building or zoning ordinance, restrictive covenants or other law of any entity of government or public authority; and
- (h) Any mortgage placed upon the Property by Purchaser in connection with the closing of the sale of the above-described Lot.

7. **Title Evidence:** A title insurance binder or policy, or title opinion, will be issued to Purchaser in connection with the transaction, at the expense of Seller, and will show that Seller, immediately prior to the conveyance of the Lot to Purchaser, is vested with title to the Lot, subject only to the title exceptions provided for in paragraph 6 of this contract which Purchaser, by execution hereof, specifically approves.

8. **Closing Date:** Closing shall take place on or before November 26, 2003. Possession of the Property shall be granted no later than the Closing Date. SELLER may assess a 1% penalty on the total purchase price for each 15-day period that closing is delayed by no fault of SELLER.

9. **Closing Expenses:** The SELLER will pay for a title insurance standard coverage owners' policy, recording fees for the release of encumbrances, and preparation of the warranty deed. The BUYER will pay for any extended coverage on the title insurance policy, appraisal or any other fees and costs associated with BUYER's finance of the property, recording fees for the warranty deed and financing documents, if any. BUYER and SELLER agree to split equally the escrow agents' closing fees.

10. **Prorations:** General taxes for the year of closing based on the most recent calendar year assessment, irrigation assessments, prepaid rents, water rights, association fees, dues or assessments, utilities, insurance premiums and interest on encumbrances, if any and if applicable, will be prorated as of the Closing Date. If on the Closing Date the amount of such taxes, assessments and fees is not yet fully ascertained for the current year, the apportionment of taxes has been estimated on the basis of the best information available, and such estimate shall be conclusive between the parties.

11. **INSPECTION:**

(A) BUYER chooses ☐ to have inspection ☐ not to have inspection. If BUYER chooses not to have inspection skip section 12. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYERS' expense. BUYER shall, within 10 business days of acceptance,

complete these inspections and give to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER's own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B) **FHA INSPECTION REQUIREMENT**, if applicable: "For Your Protection: Get a Home Inspection", HUD 92564-CN must be signed on or before execution of this agreement.

(C) **SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES**:

- i. If BUYER does not within the strict time period specified give to SELLER written notice of disapproved-of items, BUYER shall conclusively be deemed to have: a) completed all inspections, investigations, review of applicable documents and disclosures; b) elected to proceed with the transaction and c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.
- ✓ ii. If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 10 business days in which to respond in writing. The SELLER, at their option may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYER's inspection contingency.
- iii. If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair, correct or cancel the transaction. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

12. **Lead Paint Disclosure:** The subject property is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards.
13. **Square Footage Verification:** BUYER is aware that any reference to the square footage of the real property or improvements is approximate.
14. **Teton Spring's Covenants:** Teton Springs will not provide or complete roads, sewer, water, gas, electric, or telephone service, or recreational facilities except:

- (a) The above-described property is or will be located on a paved road (for purposes of this Contract, "paved" means concrete or pavement with

bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated), which has been or will be built to standards established by the state or the unit of local government in which the Community is located, and the Teton Springs Master Association is obligated to accept the road for maintenance;

- (b) Water lines have been or will be extended to the above-described property and service is to be provided by Teton Springs Water and Sewer;
- (c) Sewer lines have been or will be extended to the above-described property and service is to be provided by Teton Springs Water and Sewer.
- (d) Electric service lines have been or will be extended to the above-described property and service is to be provided by Fall River Electric Company;
- (e) Telephone lines have been or will be extended to the above-described property and service is to be provided by Teton Telecom or a similar provider; and
- (f) Seller does not guarantee the construction of any proposed recreational facilities within or adjacent to the Teton Springs Community other than those recreational facilities as set forth in Exhibit "B" attached hereto.

Teton Springs represents that it has entered into a Development Agreement for Teton Springs Subdivision, Phase 1, with Teton County for the purpose of guaranteeing the full and satisfactory completion of the improvements identified within items (a) – (e) of this Section 14. In accordance therewith, the Teton Springs has also established an Irrevocable Letter of Credit to the benefit of the Teton County Commissioners in an effort to insure completion of the items set forth within this Section.

With respect to the above-referenced items (b) – (e), please note the following information with respect to rates and fees which are to be paid by the Purchaser:

- A. Fall River Electric Company will provide electric service at customary and usual rates and fees.
  - B. Teton Telecom or a similar provider, will provide telephone service at customary and usual rates and fees.
15. **Completion of Facilities:** The only representations made by Teton Springs with respect to the completion of roads, sewer, water, gas, electric, telephone service and recreational facilities are as set forth in Section 9 and no other representations regarding the same have been made or relied upon by Purchaser. All completion dates for roads, sewer, electric and telephone service and recreational amenities as set forth herein are subject to delays and time extensions caused by acts of God, strikes, or manpower shortages, acts of governmental authorities, labor conditions beyond the control of Seller or any other cause beyond Seller's control or other grounds to establish impossibility of performance in the State of Idaho.
16. **Golf Lot Disclosure:** The Property is located or may be located adjacent to or in close proximity to a Golf Course and Club. Purchaser acknowledges that Purchaser

has assessed the location of the Property in relation to the lay out and operation of the Golf Course and Club and acknowledges that owning the Property adjacent to or in close proximity to the Golf Course and Club involves certain risks which may have an impact and effect upon Purchaser's enjoyment of the Property. Purchaser acknowledges that such risks may include, by way of example and not as a limitation, noise associated with the playing of golf and with using the Golf Course and Club facilities; golf balls being hit into Purchaser's Property, with the potential of causing bodily injury or physical damage to any improvements or personality; and golfers entering Purchaser's Property to retrieve errant golf balls. Purchaser assumes all such risks and agrees that neither Seller, Teton Springs, the Association, nor any other entity owning or managing the Golf Course or Club, or any portion thereof, shall be liable to Purchaser or to any person claiming any loss or damage, including, without limitation, actual, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof. Purchaser hereby agrees to indemnify and to hold harmless Seller, Teton Springs, the Association, or any other entity owning or managing the Golf Course or Club, against any and all claims by Purchaser's guests, invitees, or licensees, of any nature whatsoever, based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof, including, without limitation, all costs of litigation and attorneys fees incurred by Seller, Teton Springs, the Association, or any other entity owning or managing the Golf Course or Club, or any portion thereof. Nothing contained in this paragraph 16 shall restrict or limit any power of the Seller, Teton Springs, the Association or any other entity owning or managing the Golf Course or Club, or any portion thereof, to change the design of the Golf Course or Club, or of any other portion of the Golf Course or Club and related facilities, and any such change shall not be deemed or considered to have nullified, amended, altered, restricted, or impaired the covenants, obligations, and duties of Purchaser contained herein.

17. **Purchaser's Acknowledgements Regarding Teton Springs Golf Club:**  
(NOTICE: FAILURE TO COMPLY WITH THIS PART COULD PREJUDICE YOUR ABILITY TO OBTAIN A MEMBERSHIP IN THE TETON SPRINGS GOLF CLUB.)

**Purchaser's Initials**

- (a) Purchaser explicitly acknowledges that **PURCHASER HAS FROM THE DATE HEREOF UNTIL THE LATER OF SIXTY (60) DAYS FROM THE DATE OF CLOSING HEREIN OR FROM COMPLETION OF THE GOLF COURSE TO OBTAIN APPROVAL AND ACQUIRE MEMBERSHIP IN THE TETON SPRINGS GOLF CLUB.** Memberships, which are not acquired by Purchaser by said date, may be offered on a first come, first served basis to other owners and non-owners. Accordingly,

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*See addendum*

owners who do not acquire a membership as of said date may acquire a membership at a later date ~~only if one is then available~~ and only upon payment of the initiation deposit, which is ~~then~~ charged for membership. **NOTICE: FAILURE TO ACQUIRE A MEMBERSHIP AT CLOSING MAY PROHIBIT THE PURCHASER FROM HAVING A MEMBERSHIP AVAILABLE.** Subsequent purchasers of Lots in the Teton Springs Community from members are guaranteed the availability of a membership if the selling member resigns his or her membership and arranges for the subsequent purchaser to acquire such membership. If a membership is not available, the Club of those persons who desire membership in the Club will establish a waiting list. Priority for available memberships will be given to property owners in the Teton Springs Community on the waiting list. The Club may, in its sole and absolute discretion, reserve memberships for sale to future purchasers of property in the Teton Springs Community. Memberships, which are reserved by the Club, will not be considered to be available memberships, and the Club may not be compelled to sell them.

- (b) The persons interested in acquiring a membership in the Club should **IMMEDIATELY UPON THE SIGNING OF THIS CONTRACT** submit a fully executed, completed application for membership in the Club. If the Club accepts the applicant, the Club will send the applicant notice of his or her acceptance. In the event the Club does not act favorably upon a person's application, the Club will so notify the applicant. Within the sixty (60) day period set forth above, the applicant, if accepted in the Club, shall pay to the Club the required initiation deposit, dues and any other charges as may be requested as a part of the membership. Upon payment of all deposits and required charges, the Club will then forward to the applicant a membership card for the member and his or her family members who are entitled to use the Club facilities under the membership, together with any other information deemed pertinent by the Club.
- (c) Purchaser acknowledges that the Club reserves the right, but not the obligation, to convert the Club facilities to an equity membership form of ownership. Initiation deposit members who acquire an equity membership will be entitled to a credit toward the membership contribution required for equity membership in the amount of the initiation deposit, which they previously paid.
18. **Purchaser's Covenants:** The Purchaser covenants and acknowledges that: (a) Purchaser has received copies of the Declaration and agrees to be bound by the terms and conditions of such document; (b) Purchaser or his or her spouse has made a personal, on-the-property inspection of the above-described property prior to the signing of this Contract; (c) Purchaser has received no offer of gifts, trips, dinners, or other such promotional techniques to induce him/her to visit the Teton Springs Community or to execute this Contract, either by direct mail or telephone; (d) BUYER acknowledges receipt of a good-faith written estimate of the cost of maintaining the roads over the first ten (10) years of ownership, which estimate is attached as Exhibit "A" hereto and incorporated herein by this reference; and (e) Purchaser has received a good-faith estimate of the year in which the roads, water

and sewer facilities and promised amenities will be completed, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.

19. **The Teton Springs Master Association, Inc.:** There has been or will be created the Teton Springs Master Association, Inc. Purchaser shall be a member of the Association and Purchaser's Property shall be subject to assessment by the Association, which assessment is for the purposes set forth in the Declaration. Purchaser hereby acknowledges that it is aware of the rights of the Association to levy and enforce assessments against it and Purchaser agrees to pay promptly all such assessments, which are properly made against him by the Association.
20. **Architectural Requirements:** Architectural approval and control requirements and restrictions are set forth in the Declaration. Such provide that no original construction, improvements, buildings, structures, or development of any kind whatsoever shall commence or be carried out on any lot until approved in writing by the Development Review Committee. Purchaser agrees that the actual construction on the property will have no material variation from the plans approved by the Development Review Committee unless the Development Review Committee shall have also approved such variations in writing. The Development Review Committee may grant or deny approval of Purchaser's plans on any grounds, including purely aesthetic considerations. All modifications, additions or alterations made on or to existing residential units or structures must obtain the approval of the Development Review Committee, as that term is defined in the Declaration.
21. **Default:** If Purchaser fails to perform his or her obligation under this Contract or to close the sale provided herein, Seller may, at its option, elect to enforce this Contract by declaring this Purchase Contract in default and retain any and all Earnest Money as full liquidated damages, in which event the parties will be released from any further obligation or liability to each other. Purchaser and Seller agree that the exact amount of Seller's actual damages would be impossible to calculate and that such liquidated damages are reasonable. In the event that this sale fails to close due to default on the part of the Seller, or inability of Seller to deliver "good and marketable fee simple title" to the Lot, then upon written notice from Purchaser, Seller shall return all Earnest Money, and the parties shall be released from any and all other further obligations hereunder. Neither Purchaser nor Seller shall have any further rights or remedies on account of any default except as stated in this paragraph.
22. **Condition of Property:** Purchaser and Seller hereby agree that Purchaser shall buy the Property in an "as is" condition, and Seller has not made any commitments or accepted any obligations for further work on the Property other than as expressly set forth herein. Purchaser acknowledges that Seller has not made any pledges, covenants or commitments in regard to the development of the Teton Springs Community which has induced a Purchaser of the Property to purchase said Property except as stated in this Contract.
23. **Sole Agreement:** This Contract supersedes any and all understandings and agreements between the parties and constitutes the sole and entire contract between the parties. No oral statements or representations whatsoever shall be considered a

part hereof. Any modifications must be in writing and acknowledged by the parties hereto.

24. **Binding Effect:** This Contract is binding upon the heirs, personal representatives, successors and permitted assigns of the parties.
25. **Nonassignability:** Purchaser's interest in this Contract may not be transferred or assigned, in whole or in part, without the prior written consent of Seller. In the event that Purchaser assigns or transfers, or attempts to assign or transfer, his or her interest hereunder without Seller's written consent having first been obtained, Seller may, at its option, treat such event as a default by Purchaser hereunder, and shall not be obligated to recognize the Assignee or the Transferee.
26. **Survival of Closing:** The terms and conditions of this Contract shall survive the Closing and delivery of the warranty deed. Purchaser, on behalf of himself and his successors in title, agrees that in the event of any litigation to enforce this Contract, or in the event Seller is voluntarily or involuntarily made a part to any litigation concerning this Contract, Purchaser shall protect and hold the Seller harmless from any and all costs in connection with such litigation, including reasonably attorney's fees and court costs incurred by the Seller.
27. **Notices:** Notices hereunder shall be in writing and shall be delivered by hand, courier or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party as first set forth above. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or courier delivery or on the date received.
- ✓ 28. **Idaho Law:** This Contract and all relationships between the parties hereto shall be construed, interpreted and enforced in accordance with the laws of the State of Idaho.
29. **Time of Essence:** Time is of the essence in this Contract, except as otherwise specifically provided.
30. **Severability:** The provisions of this Contract are intended to be independent. In the event that any provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Contract.
31. **Full Knowledge:** Purchaser and Seller acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions and the effect of all the provisions of this Contract and every part of the Declaration, the exhibits thereto, the amendments thereto, the By-Laws, the Supplemental Declaration, the Articles of Incorporation of the Association and all parts of the Purchaser's Package.
32. **Real Estate Brokerage Commission:** Seller shall be responsible for all real estate commissions in connection with the transaction described herein to the Broker and to any other agents, or co-brokers only if they are listed below. In no event shall Seller have any obligation to pay any real estate commission except in the event of the consummation of the closing of this transaction pursuant to the terms of this Contract. Neither Seller nor Broker has acted as agent in this transaction for the Purchaser. The co-broker listed below, if any, shall receive a total commission at Closing of \_\_\_\_\_% of the Purchase Price. Purchaser

acknowledges that Purchaser has not contracted, negotiated, or otherwise dealt with any real estate broker not specifically identified in this Contract in connection with any aspect of this transaction. Purchaser agrees to indemnify and to hold Seller harmless from any claim made by any real estate broker or any other person asserting any claim for any commission, fee, salary, or other payment for any services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction, except for any claim for such services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction by any person specifically identified herein as a real estate broker.

33. **Disclaimer:** Seller and Purchaser acknowledge that they have not relied upon the advice or representation, if any, of Broker (or Broker's associated salespersons) relative to any consequences of this Contract and the sale of the Property, the purchase and ownership of the Property, the condition of the Property, the availability of utilities to the Property, or the investment potential or resale value of the Property. Seller and Purchaser both acknowledge that if such matters are of concern to them, they have sought and obtained independent advice. Purchaser acknowledges that Broker (or Broker's associated salespersons) are representatives of the Seller and are not acting by or for Purchaser in any capacity.
34. **Revocation:** This Contract may be revoked at the option of Purchaser until midnight of the seventh (7<sup>th</sup>) day following the signing of this Contract. This provision is non-waivable.
35. **Definitions:** The words used in this Contract shall have the same meaning as set forth in the Declaration and any amendment applicable thereto, as recorded or to be recorded in the land records of Teton County, Idaho, which, by this reference, are incorporated herein.

**Special Stipulations:** See attached April 25, 2003 letter and Exhibit "C"  
Model Cabin Purchase document

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals and executed this contract in duplicate on the dates set forth by the signature (the contract date being the date that the last party signs this agreement).

Print Purchaser's Name:

PURCHASER:

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

Print Purchaser's Address and Phone Numbers:

\_\_\_\_\_  
Address

Signed as to Purchaser this \_\_\_\_\_  
day of \_\_\_\_\_, 200 \_\_\_\_\_



\_\_\_\_\_  
Address

\_\_\_\_\_  
Home Phone

\_\_\_\_\_  
Business Phone

\_\_\_\_\_  
Facsimile

Print Purchaser's County of Residence:

\_\_\_\_\_



Changes made 12/17/03  
Rec'd 12/23/03  
back

REVISION  
REC'D 12/23/03 6:30 PM

TETON SPRINGS  
TETON VALLEY IDAHO  
THEIR CHANGES TO OUR 1ST REVISION AND SUBSEQUENT

TETON SPRINGS CONTRACT FOR PROPERTY SALE

EFFECTIVE DATE:

LEAVES BLANK - (DATE NOT KNOWN)  
December 22, 2003

PURCHASER (S):

DONALD K. AND IRENE FRANCES  
Don and Fran Harger HARGER

SELLER:

Teton Springs LLC

In consideration of the mutual covenants contained herein, and in further consideration of the purchase price specified below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, the below described real estate subject to the terms, conditions and obligations herein:

1. **Property:** The Purchaser agrees to buy and the Seller agrees to sell the premises commonly known as 11 Warm Creek Lane and legally described as Tract number, 9 Lot, 24 with improvements located in the Teton Springs Community ("Community"), a planned development located in Teton County, Idaho, such Lot being more particularly shown and identified on that certain plat of survey recorded in the Teton County Clerk's Office under Instrument #141372, dated February 13, 2001, as the same has been or may be amended, such plat being incorporated herein; and made a part hereof, by this reference.
2. **Purchase Price and Method of Payment:** Purchaser represents that Purchaser will have, at the Date of Closing, sufficient cash (together with the loan, if any, described herein) to complete the purchase hereunder. The purchase price of the Property shall be: \$653,901.00, to be paid as set forth in subparagraph A or B [select A or B, the option not selected is not a part of the Agreement] and as shown below:
  - ☐ A. All Cash at Closing. At Closing, Purchaser shall pay the purchase price to seller in cash, or its equivalent. Purchaser's obligation to close shall not be contingent upon Purchaser's ability to obtain financing.
  - ☐ B. Where New Loan to be Obtained. This Agreement is made conditional upon Purchaser's "ability to obtain" (as defined herein) a loan in the principal amount of 80 percent of the purchase price to be evidenced by a promissory note and secured by a mortgage on the Property. Purchaser shall be obligated to close this transaction if Purchaser has the ability to obtain a loan as set forth above. "Ability to obtain" means that Purchaser is

qualified to receive the loan described herein based upon lender's customary and standard underwriting criteria. Proceeds of said loan, together with any balance of the purchase price shall be paid in cash or its equivalent by Purchaser to Seller at closing.

Purchaser agrees to make application for said loan within ten (10) days from date of this Agreement, and pursue said application diligently and in good faith, to execute all papers, to provide all documents, to perform all other actions necessary to obtain such loan and to accept such loan if approved by lender. Should Purchaser not apply for said loan in the time specified above, Seller may declare Purchaser in default and Purchaser shall have five (5) days to cure said default by providing Seller written evidence of formal loan application.

If within thirty (30) calendar days from the date this Contract becomes a binding agreement Seller has not received written notice from Purchaser that Purchaser is unable to qualify for a loan as described herein, then said financing contingency shall be deemed waived by Purchaser and, thereafter, a failure of the Purchaser to close because of the inability to obtain a loan shall be a default by Purchaser. Upon automatic waiver of the contingency, the future inability of the Purchaser to obtain a loan due to the lack of credit worthiness shall be considered a default hereunder. Purchaser acknowledges and represents that he has not relied upon the advice or representation, if any, of Seller or any salespersons representing Seller regarding the type of loan or the terms of any particular loan program to be obtained by Purchaser. Purchaser shall have the responsibility of independently investigating and choosing the lender, type of loan, and said loan program to be applied for by purchaser in connection with this transaction. Purchaser agrees to hold harmless Seller and any salespersons representing Seller, from any claims or loss whatsoever arising out of Purchaser's application and commitment for any loan, and with respect to the terms of instruments evidencing or securing said loan.

3. **Earnest Money:** Purchaser has paid to the Escrow Agent identified below \$126,940.00, as earnest money, which earnest money is to be applied as part payment of the purchase price at time of closing. Escrow Agent shall deposit the earnest money in the escrow account upon receipt. In the event the earnest money check is returned for insufficient funds or otherwise not honored, Seller shall in its discretion have the right to terminate this Agreement. The earnest money may only be disbursed: (a) at closing, (b) upon written agreement signed by all parties, (c) upon Court order, (d) upon breach by either party to the non-breaching party, (e) upon failure of any contingency herein, or (f) as otherwise set forth herein.

Escrow Agent: \_\_\_\_\_

4. **Other Terms And/Or Conditions:** this Agreement is made subject to the following special terms, considerations and /or contingencies which must be satisfied prior to closing or following closing.

\_\_\_\_\_  
Interior punch list of uncompleted items

\_\_\_\_\_  
Exterior punch list of uncompleted items

5. **Items Included & Excluded In This Sale:** All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include all attached floor coverings, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, irrigation fixtures and equipment, all water systems, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the price and condition of the property are acceptable.

(a) **ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE:**

Clothes Dryer and Clothes Washer

(b) **ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:**

6. **Conveyance of Property:** Seller warrants that it currently has good and marketable, fee simple title to the property and shall convey the property by warranty deed to Purchaser at closing. Good and marketable title means insurable title at normal rates without exception except for permitted title exceptions and preprinted standard title exceptions. Conveyance shall be free of monetary liens or encumbrances, subject to preprinted standard title exceptions and the following permitted title exceptions, to-wit:

- (a) ~~Property taxes~~ Property taxes for the year of sale;
- (b) Such state of facts as would be disclosed by an accurate survey and inspection of the premises;
- (c) The exact amount of acreage in the property;
- (d) All such other covenants, conditions, restrictions and easements of record as may now affect the Property;
- (e) All those matters shown on the plat of survey referred to above, as has been or may be amended;

- (f) That certain Master Declaration of Protective Covenants for Teton Springs Golf & Casting Club, dated August 15, 2001, as amended (the "Declaration");
- (g) Restrictions relating to building upon or using the Property by virtue of any building or zoning ordinance, restrictive covenants or other law of any entity of government or public authority; and
- (h) Any mortgage placed upon the Property by Purchaser in connection with the closing of the sale of the above-described Lot.

7. **Title Evidence:** A title insurance binder or policy, or title opinion, will be issued to Purchaser in connection with the transaction, at the expense of Seller, and will show that Seller, immediately prior to the conveyance of the Lot to Purchaser, is vested with title to the Lot, subject only to the title exceptions provided for in paragraph 6 of this contract which Purchaser, by execution hereof, specifically approves.

8. **Closing Date:** Closing shall take place on or before ~~December 29<sup>th</sup> 2003~~ <sup>LEAVE BLANK</sup>. Possession of the Property shall be granted no later than the Closing Date. SELLER may assess a 1% penalty on the total purchase price for each 15-day period that closing is delayed by no fault of SELLER. Should BUYER fail to close by December 31<sup>st</sup> 2003 seller may declare contract void and must refund all monies given by the buyer plus 1/2% interest per month, 6% per annum pro rated for the time Buyer has had the money invested with Teton Springs. Payment to be made no later than January 7<sup>th</sup> 2004.

9. **Closing Expenses:** The SELLER will pay for a title insurance standard coverage owners' policy, recording fees for the release of encumbrances, and preparation of the warranty deed. The BUYER will pay for any extended coverage on the title insurance policy, appraisal or any other fees and costs associated with BUYER's finance of the property, recording fees for the warranty deed and financing documents, if any. BUYER and SELLER agree to split equally the escrow agents' closing fees.

10. **Prorations:** General taxes for the year of closing based on the most recent calendar year assessment, irrigation assessments, prepaid rents, water rights, association fees, dues or assessments, utilities, insurance premiums and interest on encumbrances, if any and if applicable, will be prorated as of the Closing Date. If on the Closing Date the amount of such taxes, assessments and fees is not yet fully ascertained for the current year, the apportionment of taxes has been estimated on the basis of the best information available, and such estimate shall be conclusive between the parties.

11. **INSPECTION:**

(A) BUYER chooses ☒ to have inspection ☐ not to have inspection. If BUYER chooses not to have inspection skip section 12. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYERS' expense. BUYER shall, within 10 business days of acceptance,

complete these inspections and give to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER's own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B) FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection", HUD 92564-CN must be signed on or before execution of this agreement.

(C) SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

- i. If BUYER does not within the strict time period specified give to SELLER written notice of disapproved-of items, BUYER shall conclusively be deemed to have: a) completed all inspections, investigations, review of applicable documents and disclosures; b) elected to proceed with the transaction and c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.
- ii. If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 10 business days in which to respond in writing. The SELLER, at their option may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYER's inspection contingency.
- iii. If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair, correct or cancel the transaction. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnity and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

12. **Lead Paint Disclosure:** The subject property is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards.
13. **Square Footage Verification:** BUYER is aware that any reference to the square footage of the real property or improvements is approximate.
14. **Teton Spring's Covenants:** Teton Springs will not provide or complete roads, sewer, water, gas, electric, or telephone service, or recreational facilities except:

- (a) The above-described property is or will be located on a paved road (for purposes of this Contract, "paved" means concrete or pavement with

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PAR 22,  
ADDENDUM  
TO SALE  
PAR 4  
Etc.

bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated), which has been or will be built to standards established by the state or the unit of local government in which the Community is located, and the Teton Springs Master Association is obligated to accept the road for maintenance;

- (b) Water lines have been or will be extended to the above-described property and service is to be provided by Teton Springs Water and Sewer;
- (c) Sewer lines have been or will be extended to the above-described property and service is to be provided by Teton Springs Water and Sewer.
- (d) Electric service lines have been or will be extended to the above-described property and service is to be provided by Fall River Electric Company;
- (e) Telephone lines have been or will be extended to the above-described property and service is to be provided by Teton Telecom or a similar provider; and
- (f) Seller does not guarantee the construction of any proposed recreational facilities within or adjacent to the Teton Springs Community other than those recreational facilities as set forth in Exhibit "B" attached hereto.

Teton Springs represents that it has entered into a Development Agreement for Teton Springs Subdivision, Phase 1, with Teton County for the purpose of guaranteeing the full and satisfactory completion of the improvements identified within items (a) – (e) of this Section 14. In accordance therewith, the Teton Springs has also established an Irrevocable Letter of Credit to the benefit of the Teton County Commissioners in an effort to insure completion of the items set forth within this Section.

With respect to the above-referenced items (b) – (e), please note the following information with respect to rates and fees which are to be paid by the Purchaser:

- A. Fall River Electric Company will provide electric service at customary and usual rates and fees.
- B. Teton Telecom or a similar provider, will provide telephone service at customary and usual rates and fees.

15. **Completion of Facilities:** The only representations made by Teton Springs with respect to the completion of roads, sewer, water, gas, electric, telephone service and recreational facilities are as set forth in Section 14 and no other representations regarding the same have been made or relied upon by Purchaser. All completion dates for roads, sewer, electric and telephone service and recreational amenities as set forth herein are subject to delays and time extensions caused by acts of God, strikes, or manpower shortages, acts of governmental authorities, labor conditions beyond the control of Seller or any other cause beyond Seller's control or other grounds to establish impossibility of performance in the State of Idaho.

16. **Golf Lot Disclosure:** The Property is located or may be located adjacent to or in close proximity to a Golf Course and Club. Purchaser acknowledges that Purchaser



has assessed the location of the Property in relation to the lay out and operation of the Golf Course and Club and acknowledges that owning the Property adjacent to or in close proximity to the Golf Course and Club involves certain risks which may have an impact and effect upon Purchaser's enjoyment of the Property. Purchaser acknowledges that such risks may include, by way of example and not as a limitation, noise associated with the playing of golf and with using the Golf Course and Club facilities; golf balls being hit into Purchaser's Property, with the potential of causing bodily injury or physical damage to any improvements or personality; and golfers entering Purchaser's Property to retrieve errant golf balls. Purchaser assumes all such risks and agrees that neither Seller, Teton Springs, the Association, nor any other entity owning or managing the Golf Course or Club, or any portion thereof, shall be liable to Purchaser or to any person claiming any loss or damage, including, without limitation, actual, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof. Purchaser hereby agrees to indemnify and to hold harmless Seller, Teton Springs, the Association, or any other entity owning or managing the Golf Course or Club, against any and all claims by Purchaser's guests, invitees, or licensees, of any nature whatsoever, based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof, including, without limitation, all costs of litigation and attorneys fees incurred by Seller, Teton Springs, the Association, or any other entity owning or managing the Golf Course or Club, or any portion thereof. Nothing contained in this paragraph 16 shall restrict or limit any power of the Seller, Teton Springs, the Association or any other entity owning or managing the Golf Course or Club, or any portion thereof, to change the design of the Golf Course or Club, or of any other portion of the Golf Course or Club and related facilities, and any such change shall not be deemed or considered to have nullified, amended, altered, restricted, or impaired the covenants, obligations, and duties of Purchaser contained herein.

17. **Purchaser's Acknowledgements Regarding Teton Springs Golf Club:**  
(NOTICE: FAILURE TO COMPLY WITH THIS PART COULD PREJUDICE  
YOUR ABILITY TO OBTAIN A MEMBERSHIP IN THE TETON SPRINGS  
GOLF CLUB.)

Purchaser's Initials

- (a) Purchaser acknowledges that the Club reserves the right, but not the obligation, to convert the Club facilities to an equity membership form of ownership. Initiation deposit members who acquire an equity membership will be entitled to a credit toward the membership contribution required for equity membership in the amount of the initiation deposit, which they previously paid.

18. **Purchaser's Covenants:** The Purchaser covenants and acknowledges that: (a) Purchaser has received copies of the Declaration and agrees to be bound by the terms and conditions of such document; (b) Purchaser or his or her spouse has made a personal, on-the-property inspection of the above-described property prior to the signing of this Contract; (c) Purchaser has received no offer of gifts, trips, dinners, or other such promotional techniques to induce him/her to visit the Teton Springs Community or to execute this Contract, either by direct mail or telephone; (d) BUYER acknowledges receipt of a good-faith written estimate of the cost of maintaining the roads over the first ten (10) years of ownership, which estimate is attached as Exhibit "A" hereto and incorporated herein by this reference; and (e) Purchaser has received a good-faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.
19. **The Teton Springs Master Association, Inc.:** There has been or will be created the Teton Springs Master Association, Inc. Purchaser shall be a member of the Association and Purchaser's Property shall be subject to assessment by the Association, which assessment is for the purposes set forth in the Declaration. Purchaser hereby acknowledges that it is aware of the rights of the Association to levy and enforce assessments against it and Purchaser agrees to pay promptly all such assessments, which are properly made against him by the Association.
20. **Architectural Requirements:** Architectural approval and control requirements and restrictions are set forth in the Declaration. Such provide that no original construction, improvements, buildings, structures, or development of any kind whatsoever shall commence or be carried out on any lot until approved in writing by the Development Review Committee. Purchaser agrees that the actual construction on the property will have no material variation from the plans approved by the Development Review Committee unless the Development Review Committee shall have also approved such variations in writing. The Development Review Committee may grant or deny approval of Purchaser's plans on any grounds, including purely aesthetic considerations. All modifications, additions or alterations made on or to existing residential units or structures must obtain the approval of the Development Review Committee, as that term is defined in the Declaration.
21. **Default:** If Purchaser fails to perform his or her obligation under this Contract or to close the sale provided herein, Seller may, at its option, elect to enforce this Contract by declaring this Purchase Contract in default and retain any and all Earnest Money as full liquidated damages, in which event the parties will be released from any further obligation or liability to each other. Purchaser and Seller agree that the exact amount of Seller's actual damages would be impossible to calculate and that such liquidated damages are reasonable. In the event that this sale fails to close due to default on the part of the Seller, or inability of Seller to deliver "good and marketable fee simple title" to the Lot, then upon written notice from Purchaser, Seller shall return all Earnest Money, and the parties shall be released from any and all other further obligations hereunder. Neither Purchaser

~~FRANK~~ ~~WE COULD~~ ~~ON THE~~  
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~~YOUR ORIGINAL PARAGRAPH IN~~  
~~PLACE~~

nor Seller shall have any further rights or remedies on account of any default except as stated in this paragraph.

~~22.~~

22. **Condition of Property:** Purchaser and Seller hereby agree that Purchaser shall buy the Property ~~is in "as is" condition~~, and Seller has not made any commitments or accepted any obligations for further work on the Property other than as expressly set forth herein. Purchaser acknowledges that Seller has not made any pledges, covenants or commitments in regard to the development of the Teton Springs Community which has induced a Purchaser of the Property to purchase said Property except as stated in this Contract. Notwithstanding the foregoing, Seller guarantees that the residence was constructed to the design specifications and will guarantee against any defects in the quality of work and material for a period of ~~one~~ **FOUR** years from the date of its completion. This warranty does not cover damages or defects that are the result of characteristics common to the materials used, or conditioned resulting from condensation, expansion, or contraction of such materials, nor for work performed by person hired by the Buyer. Warranty work must be started within a reasonable time following the date of receipt of written request from the Buyer and completed within a reasonable time. Seller warrants that all appliances and mechanical units included in this sale shall be in proper working condition as of the date of closing. Any contractor's ~~and~~ manufactures' warranties for the cabin and appliances, electric and plumbing equipment in the cabin, to the extent transferable, will be transferred at closing to the Buyer. Seller shall ultimately be responsible for any warranties a contractor or subcontractor wrongfully fails to uphold. **THEY DID NOT ADD DONIS Paragraph given on 12/17/1**

OUR  
CHANGE  
FOUR

23. **Sole Agreement:** This Contract supersedes any and all understandings and agreements between the parties and constitutes the sole and entire contract between the parties. No oral statements or representations whatsoever shall be considered a part hereof. Any modifications must be in writing and acknowledged by the parties hereto.

24. **Binding Effect:** This Contract is binding upon the heirs, personal representatives, successors and permitted assigns of the parties.

(a) Buyer is purchasing a Model Cabin. Teton Springs will lease the same cabin from Buyer/Owner for a period of three years (36 months) from the date of purchase (Model Cabin Lease Back), will guarantee Owner the sum of Three Thousand Dollars (\$3,000.00) per month for the three year period beginning 30 days from the date of closing. During this time Seller shall pay the cabin insurance, homeowners association dues, special assessments, all utilities, landscape maintenance, cleaning, property maintenance, ~~and personal property taxes~~. At the end of the three-year period, the parties may mutually agree to an additional one-year period on the same terms and conditions. Neither Seller nor Buyer will use the cabin for personal overnight accommodation during the three-year lease. However the Buyer and/or guest shall be entitled to occupy one of the cabin rentals for up to three

SHOULD  
THESE APPLS  
BE HERE?

ADD  
IN RENTAL  
INCOME  
FRANK  
USE "CLOSING"  
OR  
"PURCHASE"?

TO BE PAYABLE  
ON THE 1st OF JANUARY BEGINNING OF THE DATE  
OF CLOSING  
EXISTING

(3) weeks per year upon adequate notice and only one Holiday week.

(b) If the parties do not mutually agree on an additional one-year extension then the owner shall be guaranteed two thousand dollars (\$2,000.00) per month. Any rental income above \$2,000.00 per month shall be split after deduction for those expenses outlined in the Property Management Agreement. Buyer or his guest shall be entitled to occupy the cabin for (3) week per year upon adequate notice.

(c) At the end of the Model Cabin leaseback period and extension (if any) and at the end of the Rental Program (if applicable), seller will thoroughly clean the cabin (including touchup paint and carpet cleaning), and perform all necessary minor repairs and maintenance required to restore the cabin to its original condition.

EXCEPTED, expected.

AND PROPERTY TO ITS ORIGINAL CONDITION AS AT CLOSING

**Nonassignability:** Purchaser's interest in this Contract may not be transferred or assigned, in whole or in part, without the prior written consent of Seller. In the event that Purchaser assigns or transfers, or attempts to assign or transfer, his or her interest hereunder without Seller's written consent having first been obtained, Seller may, at its option, treat such event as a default by Purchaser hereunder, and shall not be obligated to recognize the Assignee or the Transferee.

26. **Survival of Closing:** The terms and conditions of this Contract shall survive the Closing and delivery of the warranty deed. Purchaser, on behalf of himself and his successors in title, agrees that in the event of any litigation to enforce this Contract, or in the event Seller is voluntarily or involuntarily made a part to any litigation concerning this Contract, Purchaser shall protect and hold the Seller harmless from any and all costs in connection with such litigation, including reasonably attorney's fees and court costs incurred by the Seller.

Owners will have the option to reserve a Resident Charter Golf Membership at a cost of Sixteen Thousand Dollars (\$16,000.00) during the term of the lease back. At the end of the Lease back period the buyer must activate the membership at \$16,000.00 to qualify for the 2-year rental guarantee program. Such purchase must be made prior to the expiration of the applicable period.

Owners may purchase the furniture installed in the model at the end of the Cabin model Lease Back period. The price will be no more than the cost of the furnishing a similar model. At present time these costs range from \$40,000.00 to \$60,000.00. Normal kitchen appliances approved as a part of all cabins offerings are the property of the Owner and are not considered furniture.

**Notices:** Notices hereunder shall be in writing and shall be delivered by hand, courier or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party as first set forth above. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or courier delivery or on the date received.

28. **Idaho Law:** This Contract and all relationships between the parties hereto shall be construed, interpreted and enforced in accordance with the laws of the State of Idaho.
29. **Time of Essence:** Time is of the essence in this Contract, except as otherwise specifically provided.
30. **Severability:** The provisions of this Contract are intended to be independent. In the event that any provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Contract.
31. **Full Knowledge:** Purchaser and Seller acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions and the effect of all the provisions of this Contract and every part of the Declaration, the exhibits thereto, the amendments thereto, the By-Laws, the Supplemental Declaration, the Articles of Incorporation of the Association and all parts of the Purchaser's Package.
32. **Real Estate Brokerage Commission:** Seller shall be responsible for all real estate commissions in connection with the transaction described herein to the Broker and to any other agents, or co-brokers only if they are listed below. In no event shall Seller have any obligation to pay any real estate commission except in the event of the consummation of the closing of this transaction pursuant to the terms of this Contract. Neither Seller nor Broker has acted as agent in this transaction for the Purchaser. The co-broker listed below, if any, shall receive a total commission at Closing of NA % of the Purchase Price. Purchaser acknowledges that Purchaser has not contracted, negotiated, or otherwise dealt with any real estate broker not specifically identified in this Contract in connection with any aspect of this transaction. Purchaser agrees to indemnify and to hold Seller harmless from any claim made by any real estate broker or any other person asserting any claim for any commission, fee, salary, or other payment for any services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction, except for any claim for such services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction by any person specifically identified herein as a real estate broker.
33. **Disclaimer:** Seller and Purchaser acknowledge that they have not relied upon the advice or representation, if any, of Broker (or Broker's associated salespersons) relative to any consequences of this Contract and the sale of the Property, the purchase and ownership of the Property, the condition of the Property, the availability of utilities to the Property, or the investment potential or resale value of the Property. Seller and Purchaser both acknowledge that if such matters are of concern to them, they have sought and obtained independent advice. Purchaser acknowledges that Broker (or Broker's associated salespersons) are representatives of the Seller and are not acting by or for Purchaser in any capacity.
34. **Revocation:** This Contract may be revoked at the option of Purchaser until midnight of the seventh (7<sup>th</sup>) day following the signing of this Contract. This provision is non-waivable.

H/A0143

1. ~~STANDARD~~  
2. ~~REQUESTED~~

UPON PURCHASE OF PROPERTY BY Buyer, Seller will  
immediately remit a rebate of \$11,000.00  
to the Buyer as per Addendum 1 dated April 19, 2011

35. **Definitions:** The words used in this Contract shall have the same meaning as set forth in the Declaration and any amendment applicable thereto, as recorded or to be recorded in the land records of Teton County, Idaho, which, by this reference, are incorporated herein.

**ADD: THE TERMS "BUYER" "PURCHASER" AND "OWNER" SHALL BE SYNONYMOUS. THE TERMS "SELLER" AND "SPECIAL STIPULATIONS: See Addendum "TETON SPRINGS" SHALL BE SYNONYMOUS.**

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals and executed this contract in duplicate on the dates set forth by the signature (the contract date being the date that the last party signs this agreement).

Print Purchaser's Name:

PURCHASER:

Donald K. Harger and Irene Frances Harger

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

Print Purchaser's Address and Phone Numbers:

PO Box 2826

Address

Signed as to Purchaser this \_\_\_\_\_

day of \_\_\_\_\_, 200\_\_

Jackson WY 83001

Address

307-733-4750

Home Phone

307-730-4750

Business Phone

307-739-4750

Facsimile

Print Purchaser's County of Residence:

Teton County WY



2ND REVISION

REC'D. 12/29/03  
5:30PM

1.

(AFTER DISCUSSION w

TETON SPRINGS

TETON VALLEY IDAHO

BILL Reid + myse

FAX Bill

887-8002

## TETON SPRINGS CONTRACT FOR PROPERTY SALE

EFFECTIVE DATE:

PURCHASER (S):

Donald K. and Irene Francis Harger

SELLER:

Teton Springs LLC

In consideration of the mutual covenants contained herein, and in further consideration of the purchase price specified below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, the below described real estate subject to the terms, conditions and obligations herein:

1. **Property:** The Purchaser agrees to buy and the Seller agrees to sell the premises commonly known as 11 Warm Creek Lane and legally described as Tract number, 9 Lot, 24 with improvements located in the Teton Springs Community ("Community"), a planned development located in Teton County, Idaho, such Lot being more particularly shown and identified on that certain plat of survey recorded in the Teton County Clerk's Office under Instrument #141372, dated February 13, 2001, as the same has been or may be amended, such plat being incorporated herein, and made a part hereof, by this reference.
2. **Purchase Price and Method of Payment:** Purchaser represents that Purchaser will have, at the Date of Closing, sufficient cash (together with the loan, if any, described herein) to complete the purchase hereunder. The purchase price of the Property shall be: \$653,901.00 to be paid as set forth in subparagraph A or B [select A or B, the option not selected is not a part of the Agreement] and as shown below:
  - ☐ A. All Cash at Closing. At Closing, Purchaser shall pay the purchase price to seller in cash, or its equivalent. Purchaser's obligation to close shall not be contingent upon Purchaser's ability to obtain financing.
  - ☐ B. Where New Loan to be Obtained. This Agreement is made conditional upon Purchaser's "ability to obtain" (as defined herein) a loan in the principal amount of 80 percent of the purchase price to be evidenced by a promissory note and secured by a mortgage on the Property. Purchaser shall be obligated to close this transaction if Purchaser has the ability to obtain a loan as set forth above. "Ability to obtain" means that Purchaser is



qualified to receive the loan described herein based upon lender's customary and standard underwriting criteria. Proceeds of said loan, together with any balance of the purchase price shall be paid in cash or its equivalent by Purchaser to Seller at closing.

Purchaser agrees to make application for said loan within ten (10) days from date of this Agreement, and pursue said application diligently and in good faith, to execute all papers, to provide all documents, to perform all other actions necessary to obtain such loan and to accept such loan if approved by lender. Should Purchaser not apply for said loan in the time specified above, Seller may declare Purchaser in default and Purchaser shall have five (5) days to cure said default by providing Seller written evidence of formal loan application.

If within thirty (30) calendar days from the date this Contract becomes a binding agreement Seller has not received written notice from Purchaser that Purchaser is unable to qualify for a loan as described herein, then said financing contingency shall be deemed waived by Purchaser and, thereafter, a failure of the Purchaser to close because of the inability to obtain a loan shall be a default by Purchaser. Upon automatic waiver of the contingency, the future inability of the Purchaser to obtain a loan due to the lack of credit worthiness shall be considered a default hereunder. Purchaser acknowledges and represents that he has not relied upon the advice or representation, if any, of Seller or any salespersons representing Seller regarding the type of loan or the terms of any particular loan program to be obtained by Purchaser. Purchaser shall have the responsibility of independently investigating and choosing the lender, type of loan, and said loan program to be applied for by purchaser in connection with this transaction. Purchaser agrees to hold harmless Seller and any salespersons representing Seller, from any claims or loss whatsoever arising out of Purchaser's application and commitment for any loan, and with respect to the terms of instruments evidencing or securing said loan.

3. **Earnest Money:** Purchaser has paid to the Escrow Agent identified below \$126,940.00, as earnest money, which earnest money is to be applied as part payment of the purchase price at time of closing. Escrow Agent shall deposit the earnest money in the escrow account upon receipt. In the event the earnest money check is returned for insufficient funds or otherwise not honored, Seller shall in its discretion have the right to terminate this Agreement. The earnest money may only be disbursed: (a) at closing, (b) upon written agreement signed by all parties, (c) upon Court order, (d) upon breach by either party to the non-breaching party, (e) upon failure of any contingency herein, or (f) as otherwise set forth herein.  
**Escrow Agent:** \_\_\_\_\_.

4. **Other Terms And/Or Conditions:** this Agreement is made subject to the following special terms, considerations and /or contingencies which must be satisfied prior to closing or following closing.

\_\_\_\_\_  
Interior punch list of uncompleted items

\_\_\_\_\_  
Exterior punch list of uncompleted items

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5. **Items Included & Excluded In This Sale:** All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include all attached floor coverings, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, irrigation fixtures and equipment, all water systems, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the price and condition of the property are acceptable.

(a) **ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE:**

Clothes Dryer and Clothes Washer

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(b) **ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:**

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6. **Conveyance of Property:** Seller warrants that it currently has good and marketable, fee simple title to the property and shall convey the property by warranty deed to Purchaser at closing. Good and marketable title means insurable title at normal rates without exception except for permitted title exceptions and preprinted standard title exceptions. Conveyance shall be free of monetary liens or encumbrances, subject to preprinted standard title exceptions and the following permitted title exceptions, to-wit:

- (a) Property taxes for the year of sale;
- (b) Such state of facts as would be disclosed by an accurate survey and inspection of the premises;
- (c) The exact amount of acreage in the property;
- (d) All such other covenants, conditions, restrictions and easements of record as may now affect the Property;
- (e) All those matters shown on the plat of survey referred to above, as has been or may be amended;

- (f) That certain Master Declaration of Protective Covenants for Teton Springs Golf & Casting Club, dated August 15, 2001, as amended (the "Declaration");
  - (g) Restrictions relating to building upon or using the Property by virtue of any building or zoning ordinance, restrictive covenants or other law of any entity of government or public authority; and
  - (h) Any mortgage placed upon the Property by Purchaser in connection with the closing of the sale of the above-described Lot.
7. **Title Evidence:** A title insurance binder or policy, or title opinion, will be issued to Purchaser in connection with the transaction, at the expense of Seller, and will show that Seller, immediately prior to the conveyance of the Lot to Purchaser, is vested with title to the Lot, subject only to the title exceptions provided for in paragraph 6 of this contract which Purchaser, by execution hereof, specifically approves.
8. **Closing Date:** Closing shall take place on or before December 31st 2003. Possession of the Property shall be granted no later than the Closing Date. SELLER may assess a 1% penalty on the total purchase price for each 15-day period that closing is delayed by no fault of SELLER. Should BUYER fail to close by December 31<sup>st</sup> 2003 seller may declare contract void and must refund all monies given by the buyer plus ½% interest per month, 6% per annum pro rated for the time Buyer has had the money invested with Teton Springs. Payment to be made no later than January 7<sup>th</sup> 2004.
9. **Closing Expenses:** The SELLER will pay for a title insurance standard coverage owners' policy, recording fees for the release of encumbrances, and preparation of the warranty deed. The BUYER will pay for any extended coverage on the title insurance policy, appraisal or any other fees and costs associated with BUYER's finance of the property, recording fees for the warranty deed and financing documents, if any. BUYER and SELLER agree to split equally the escrow agents' closing fees.
10. **Prorations:** General taxes for the year of closing based on the most recent calendar year assessment, irrigation assessments, prepaid rents, water rights, association fees, dues or assessments, utilities, insurance premiums and interest on encumbrances, if any and if applicable, will be prorated as of the Closing Date. If on the Closing Date the amount of such taxes, assessments and fees is not yet fully ascertained for the current year, the apportionment of taxes has been estimated on the basis of the best information available, and such estimate shall be conclusive between the parties.
11. **INSPECTION:**
- (A) BUYER chooses ☐ to have inspection ☐ not to have inspection. If BUYER chooses not to have inspection skip section 12. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYERS' expense. BUYER shall, within 10 business days of acceptance,

complete these inspections and give to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER's own selection of professionals with appropriate qualifications, to conduct inspections of the entire property.

(B) **FHA INSPECTION REQUIREMENT**, if applicable: "For Your Protection: Get a Home Inspection", HUD 92564-CN must be signed on or before execution of this agreement.

(C) **SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:**

- i. If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be deemed to have: a) completed all inspections, investigations, review of applicable documents and disclosures; b) elected to proceed with the transaction and c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.
- ii. If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 10 business days in which to respond in writing. The SELLER, at their option may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYER's inspection contingency.
- iii. If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair, correct or cancel the transaction. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens, indemnity and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

12. **Lead Paint Disclosure:** The subject property is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards.

13. **Square Footage Verification:** BUYER is aware that any reference to the square footage of the real property or improvements is approximate.

14. **Teton Spring's Covenants:** Teton Springs will not provide or complete roads, sewer, water, gas, electric, or telephone service, or recreational facilities except:

- (a) The above-described property is or will be located on a paved road (for purposes of this Contract, "paved" means concrete or pavement with

bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated), which has been or will be built to standards established by the state or the unit of local government in which the Community is located, and the Teton Springs Master Association is obligated to accept the road for maintenance;

- (b) Water lines have been or will be extended to the above-described property and service is to be provided by Teton Springs Water and Sewer;
- (c) Sewer lines have been or will be extended to the above-described property and service is to be provided by Teton Springs Water and Sewer.
- (d) Electric service lines have been or will be extended to the above-described property and service is to be provided by Fall River Electric Company;
- (e) Telephone lines have been or will be extended to the above-described property and service is to be provided by Teton Telecom or a similar provider; and
- (f) Seller does not guarantee the construction of any proposed recreational facilities within or adjacent to the Teton Springs Community other than those recreational facilities as set forth in Exhibit "B" attached hereto.

Teton Springs represents that it has entered into a Development Agreement for Teton Springs Subdivision, Phase 1, with Teton County for the purpose of guaranteeing the full and satisfactory completion of the improvements identified within items (a) – (e) of this Section 14 . In accordance therewith, the Teton Springs has also established an Irrevocable Letter of Credit to the benefit of the Teton County Commissioners in an effort to insure completion of the items set forth within this Section.

With respect to the above-referenced items (b) – (e), please note the following information with respect to rates and fees which are to be paid by the Purchaser:

- A. Fall River Electric Company will provide electric service at customary and usual rates and fees.
- B. Teton Telecom or a similar provider, will provide telephone service at customary and usual rates and fees.

- 15. **Completion of Facilities:** The only representations made by Teton Springs with respect to the completion of roads, sewer, water, gas, electric, telephone service and recreational facilities are as set forth in Section 14 and no other representations regarding the same have been made or relied upon by Purchaser. All completion dates for roads, sewer, electric and telephone service and recreational amenities as set forth herein are subject to delays and time extensions caused by acts of God, strikes, or manpower shortages, acts of governmental authorities, labor conditions beyond the control of Seller or any other cause beyond Seller's control or other grounds to establish impossibility of performance in the State of Idaho.
- 16. **Golf Lot Disclosure:** The Property is located or may be located adjacent to or in close proximity to a Golf Course and Club. Purchaser acknowledges that Purchaser

has assessed the location of the Property in relation to the lay out and operation of the Golf Course and Club and acknowledges that owning the Property adjacent to or in close proximity to the Golf Course and Club involves certain risks which may have an impact and effect upon Purchaser's enjoyment of the Property. Purchaser acknowledges that such risks may include, by way of example and not as a limitation, noise associated with the playing of golf and with using the Golf Course and Club facilities; golf balls being hit into Purchaser's Property, with the potential of causing bodily injury or physical damage to any improvements or personality; and golfers entering Purchaser's Property to retrieve errant golf balls. Purchaser assumes all such risks and agrees that neither Seller, Teton Springs, the Association, nor any other entity owning or managing the Golf Course or Club, or any portion thereof, shall be liable to Purchaser or to any person claiming any loss or damage, including, without limitation, actual, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof. Purchaser hereby agrees to indemnify and to hold harmless Seller, Teton Springs, the Association, or any other entity owning or managing the Golf Course or Club, against any and all claims by Purchaser's guests, invitees, or licensees, of any nature whatsoever, based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof, including, without limitation, all costs of litigation and attorneys fees incurred by Seller, Teton Springs, the Association, or any other entity owning or managing the Golf Course or Club, or any portion thereof. Nothing contained in this paragraph 16 shall restrict or limit any power of the Seller, Teton Springs, the Association or any other entity owning or managing the Golf Course or Club, or any portion thereof, to change the design of the Golf Course or Club, or of any other portion of the Golf Course or Club and related facilities, and any such change shall not be deemed or considered to have nullified, amended, altered, restricted, or impaired the covenants, obligations, and duties of Purchaser contained herein.

17. **Purchaser's Acknowledgements Regarding Teton Springs Golf Club:**  
(NOTICE: FAILURE TO COMPLY WITH THIS PART COULD PREJUDICE  
YOUR ABILITY TO OBTAIN A MEMBERSHIP IN THE TETON SPRINGS  
GOLF CLUB.)

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***Purchaser's Initials***

- (a) Purchaser acknowledges that the Club reserves the right, but not the obligation, to convert the Club facilities to an equity membership form of ownership. Initiation deposit members who acquire an equity membership will be entitled to a credit toward the membership contribution required for equity membership in the amount of the initiation deposit, which they previously paid.

18. **Purchaser's Covenants:** The Purchaser covenants and acknowledges that: (a) Purchaser has received copies of the Declaration and agrees to be bound by the terms and conditions of such document; (b) Purchaser or his or her spouse has made a personal, on-the-property inspection of the above-described property prior to the signing of this Contract; (c) Purchaser has received no offer of gifts, trips, dinners, or other such promotional techniques to induce him/her to visit the Teton Springs Community or to execute this Contract, either by direct mail or telephone; (d) BUYER acknowledges receipt of a good-faith written estimate of the cost of maintaining the roads over the first ten (10) years of ownership, which estimate is attached as Exhibit "A" hereto and incorporated herein by this reference; and (e) Purchaser has received a good-faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.
19. **The Teton Springs Master Association, Inc.:** There has been or will be created the Teton Springs Master Association, Inc. Purchaser shall be a member of the Association and Purchaser's Property shall be subject to assessment by the Association, which assessment is for the purposes set forth in the Declaration. Purchaser hereby acknowledges that it is aware of the rights of the Association to levy and enforce assessments against it and Purchaser agrees to pay promptly all such assessments, which are properly made against him by the Association.
20. **Architectural Requirements:** Architectural approval and control requirements and restrictions are set forth in the Declaration. Such provide that no original construction, improvements, buildings, structures, or development of any kind whatsoever shall commence or be carried out on any lot until approved in writing by the Development Review Committee. Purchaser agrees that the actual construction on the property will have no material variation from the plans approved by the Development Review Committee unless the Development Review Committee shall have also approved such variations in writing. The Development Review Committee may grant or deny approval of Purchaser's plans on any grounds, including purely aesthetic considerations. All modifications, additions or alterations made on or to existing residential units or structures must obtain the approval of the Development Review Committee, as that term is defined in the Declaration.
21. **Default:** If Purchaser fails to perform his or her obligation under this Contract or to close the sale provided herein, Seller may, at its option, elect to enforce this Contract by declaring this Purchase Contract in default and retain any and all Earnest Money as full liquidated damages, in which event the parties will be released from any further obligation or liability to each other. Purchaser and Seller agree that the exact amount of Seller's actual damages would be impossible to calculate and that such liquidated damages are reasonable. In the event that this sale fails to close due to default on the part of the Seller, or inability of Seller to deliver "good and marketable fee simple title" to the Lot, then upon written notice from Purchaser, Seller shall return all Earnest Money, and the parties shall be released from any and all other further obligations hereunder. Neither Purchaser

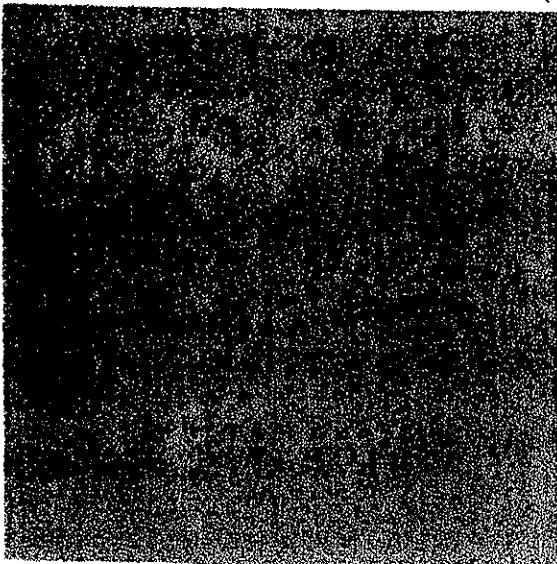
nor Seller shall have any further rights or remedies on account of any default except as stated in this paragraph.

22. **Condition of Property:** Purchaser and Seller hereby agree that Purchaser shall buy the Property; and that Seller has not made any commitments or accepted any obligations for further work on the Property other than as expressly set forth herein. Purchaser acknowledges that Seller has not made any pledges, covenants or commitments in regard to the development of the Teton Springs Community which has induced a Purchaser of the Property to purchase said Property except as stated in this Contract. Notwithstanding the forgoing, Seller guarantees that the residence was constructed to the design specifications and will guarantee against any defects in the quality of work and material for a period of ~~one year~~ <sup>FIVE YEARS</sup> from the date of its completion. This warranty does not cover damages or defects that are the result of characteristics common to the materials used, or conditioned resulting from condensation, expansion, or contraction of such materials, nor for work performed by person hired by the Buyer. Warranty work must be started within a reasonable time following the date of receipt of written request from the Buyer and completed within a reasonable time. Seller warrants that all appliances and mechanical units included in this sale shall be in proper working condition as of the date of closing. Any contractor's and manufactures' warranties for the cabin and appliances, electric and plumbing equipment in the cabin, to the extent transferable, will be transferred at closing to the Buyer. Seller shall ultimately be responsible for any warranties a contractor or subcontractor wrongfully fails to uphold.

23. **Sole Agreement:** This Contract supersedes any and all understandings and agreements between the parties and constitutes the sole and entire contract between the parties. No oral statements or representations whatsoever shall be considered a part hereof. Any modifications must be in writing and acknowledged by the parties hereto. **INSERT** →

24. **Binding Effect:** This Contract is binding upon the heirs, personal representatives, successors and permitted assigns of the parties.

(a) Buyer is purchasing a Model Cabin. Teton Springs will lease the same cabin from Buyer/Owner for a period of three years (36 months) from the date of purchase (Model Cabin Lease Back), will guarantee Owner the sum of Three Thousand Dollars (\$3,000.00) per month beginning at closing. During this time Seller shall pay the cabin insurance, homeowners association dues, special assessments, all utilities, landscape maintenance, cleaning property maintenance. At the end of the three-year period, the parties may mutually agree to an additional one-year period on the same terms and conditions. Neither Seller nor Buyer will use the cabin for personal overnight accommodation during the three-year lease. However the Buyer and/or guest shall be entitled to occupy one of the cabin rentals for up to three (3) weeks per year upon adequate notice and only one Holiday week.



ADD:  
Model  
It is  
home  
TD

They  
obj'd.

MAJOR  
of WHICH

see 4/24/04 letter



*off the Cabin lease agreement*  
AT their own may occupy or place in the tented garage where

(b) If the parties do not mutually agree on an additional one-year extension then the Owner shall be guaranteed two thousand dollars (\$2,000.00) per month. Any rental income above \$2,000.00 per month shall be split after deduction for those expenses outlined in the Property Management Agreement. Buyer or his guest shall be entitled to occupy the cabin for (3) weeks per year upon adequate notice. ~~Buyer's option~~

(c) At the end of the Model Cabin leaseback period and extension (if any) and at the end of the Rental Program (if applicable), seller will thoroughly clean the cabin (including touchup paint and carpet cleaning), and perform all necessary repairs and maintenance required to restore the cabin to quality condition. Reasonable wear and tear is expected. *its optional see*

25. **Nonassignability:** Purchaser's interest in this Contract may not be transferred or assigned, in whole or in part, without the prior written consent of Seller. In the event that Purchaser assigns or transfers, or attempts to assign or transfer, his or her interest hereunder without Seller's written consent having first been obtained, Seller may, at its option, treat such event as a default by Purchaser hereunder, and shall not be obligated to recognize the Assignee or the Transferee.

26. **Survival of Closing:** The terms and conditions of this Contract shall survive the Closing and delivery of the warranty deed. Purchaser, on behalf of himself and his successors in title, agrees that in the event of any litigation to enforce this Contract, or in the event Seller is voluntarily or involuntarily made a part to any litigation concerning this Contract, Purchaser shall protect and hold the Seller harmless from any and all costs in connection with such litigation, including reasonably attorney's fees and court costs incurred by the Seller.

Owners will have the option to reserve a Resident Charter Golf Membership at a cost of Sixteen Thousand Dollars (\$16,000.00) during the term of the lease back. At the end of the Lease back period the buyer must activate the membership at \$16,000.00 to qualify for the 2-year rental guarantee program. Such purchase must be made prior to the expiration of the applicable period.

Owners may purchase the furniture installed in the model at the end of the Cabin model Lease Back period. The price will be no more than the cost of the furnishing a similar model. At present time these cost range from \$40,000.00 to \$60,000.00. Normal kitchen appliances approved as a part of all cabins offerings are the property of the Owner and are not considered furniture.

27. **Notices:** Notices hereunder shall be in writing and shall be delivered by hand, courier or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party as first set forth above. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or courier delivery or on the date received.

*These items listed in par 5 must be that well*

28. **Idaho Law:** This Contract and all relationships between the parties hereto shall be construed, interpreted and enforced in accordance with the laws of the State of Idaho.
29. **Time of Essence:** Time is of the essence in this Contract, except as otherwise specifically provided.
30. **Severability:** The provisions of this Contract are intended to be independent. In the event that any provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Contract.
31. **Full Knowledge:** Purchaser and Seller acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions and the effect of all the provisions of this Contract and every part of the Declaration, the exhibits thereto, the amendments thereto, the By-Laws, the Supplemental Declaration, the Articles of Incorporation of the Association and all parts of the Purchaser's Package.
32. **Real Estate Brokerage Commission:** Seller shall be responsible for all real estate commissions in connection with the transaction described herein to the Broker and to any other agents, or co-brokers only if they are listed below. In no event shall Seller have any obligation to pay any real estate commission except in the event of the consummation of the closing of this transaction pursuant to the terms of this Contract. Neither Seller nor Broker has acted as agent in this transaction for the Purchaser. The co-broker listed below, if any, shall receive a total commission at Closing of NA % of the Purchase Price. Purchaser acknowledges that Purchaser has not contracted, negotiated, or otherwise dealt with any real estate broker not specifically identified in this Contract in connection with any aspect of this transaction. Purchaser agrees to indemnify and to hold Seller harmless from any claim made by any real estate broker or any other person asserting any claim for any commission, fee, salary, or other payment for any services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction, except for any claim for such services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction by any person specifically identified herein as a real estate broker.
33. **Disclaimer:** Seller and Purchaser acknowledge that they have not relied upon the advice or representation, if any, of Broker (or Broker's associated salespersons) relative to any consequences of this Contract and the sale of the Property, the purchase and ownership of the Property, the condition of the Property, the availability of utilities to the Property, or the investment potential or resale value of the Property. Seller and Purchaser both acknowledge that if such matters are of concern to them, they have sought and obtained independent advice. Purchaser acknowledges that Broker (or Broker's associated salespersons) are representatives of the Seller and are not acting by or for Purchaser in any capacity.
34. **Revocation:** This Contract may be revoked at the option of Purchaser until midnight of the seventh (7<sup>th</sup>) day following the signing of this Contract. This provision is non-waivable.

35. **Definitions:** The words used in this Contract shall have the same meaning as set forth in the Declaration and any amendment applicable thereto, as recorded or to be recorded in the land records of Teton County, Idaho, which, by this reference, are incorporated herein.
36. The terms BUYER, PURCHASER and OWNER shall be synonymous. The terms SELLER, and TETON SPRINGS shall be synonymous.

**Special Stipulations: See Addendum**

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals and executed this contract in duplicate on the dates set forth by the signature (the contract date being the date that the last party signs this agreement).

Print Purchaser's Name:

PURCHASER:

Donald K. Harger and Irene Frances Harger

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

Print Purchaser's Address and Phone Numbers:

PO Box 2826

Address

Jackson WY 83001

Address

307-733-4750

Home Phone

307-730-4750

Business Phone

307-739-4750

Facsimile

Print Purchaser's County of Residence:

Teton County WY

Signed as to Purchaser this \_\_\_\_

day of \_\_\_\_\_, 200\_\_.



~~CHIA~~ REVISION SENT -  
HARGERS + ALLEN'S

12/31/03

REVISION TO TETON SPRINGS CONTRACT

Exhibit No. <u>39</u>
Date: <u>4-6-05</u>
<u>D. Harger</u>
T&T REPORTING

Page 1: Purchaser - Irene Frances

Price - \$647,187

Page 5: Delete (C) in its' entirety. No longer applicable and covered by other sections.

Page 9: Paragraph 22 (Red Portion), 2<sup>nd</sup> sentence after the words "Design Specifications":  
Add: "and in a professional and workmanlike manner".

3<sup>rd</sup> sentence: Period of five (5) years.

Conditions (5<sup>th</sup> sentence)

Persons (7<sup>th</sup> sentence)

Warrants (9<sup>th</sup> sentence)

--- warrantees that a --- (Last sentence)

Page 9: Paragraph 22, add at end of paragraph: "Seller agrees to complete or correct all items included on building plans in the workmanlike manner with quality represented in cabins 7 and 9 and as reasonably expected in a high-end home of this kind."

Page 9: Paragraph 23, add the following at end of paragraph: "Notwithstanding the foregoing, the Agreement dated April 19, 2003 shall not merge at closing and shall be full force and effect immediately following closing."

Page 9: Paragraph 24, last sentence after words "upon adequate notice" add: "only one of which may be a major holiday."

Page 10: Sub-paragraph (b) after words "one year extension", add: "of the Cabin Lease Agreement".

After: "then the owners", add: "at their option may place the residence in the Rental Program wherein the owner" shall be ---

Page 10: Paragraph 26, 2<sup>nd</sup> paragraph in red: delete the words "normal kitchen appliances" and substitute the words: "those items listed in paragraphs 5 and 5(a) of the Agreement that were" approved ---.

ADDENDUM:

Restore 2<sup>nd</sup> paragraph to previous wording (see original attachment). Change withholding to 150% from 200% (our concession).

Our attorney strongly advises against the use of a "mutually acceptable third party arbitrator" as this is seldom a satisfactory solution. As long as you meet your obligations you really have no problem.

H/A0396

P.O. BOX 2826  
JACKSON, WY 83001

DONALD K. HARGER

TELE: (307)733-4750

CELL: (307)730-4750

FAX: (307)739-4750

FACSIMILE

TO: BILL REID FAX: (208) 787-8002

SUBJECT: REVISIONS DATE: 12/31/03

MESSAGE:

H/A0397



WILL NOT  
COMMENTS AFTER  
TELECON - HE FAXED  
THIS COPY

REVISION TO TETON SPRINGS CONTRACT

REC'D. 12/31/03

5:00 PM PROX

12/31/03

Net Price 63,290.00  
+ 5 Price 120,000

Page 1: Purchaser - Irene Frances

Price - \$647,187

cannot change

Page 5: Delete (C) in its' entirety. No longer applicable and covered by other sections.

Page 9: Paragraph 22 (Red Portion), 2<sup>nd</sup> sentence after the words "Design Specifications":  
Add: "and in a professional and workmanlike manner".

3<sup>rd</sup> sentence: Period of five (5) years. Not able to do

Condition (5<sup>th</sup> sentence) OK

Person (7<sup>th</sup> sentence) OK

Warrant (9<sup>th</sup> sentence) OK

--- warrants that a --- (Last sentence) OK

Page 9: Paragraph 22, add at end of paragraph: "Seller agrees to complete or correct all items included on building plans in the workmanlike manner with quality represented in plans and as reasonably expected in a high-end home of this kind."

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Restore 2<sup>nd</sup> paragraph to previous wording (see original attachment). Change withholding to 150% from 200% (our concession).

Our attorney strongly advises against the use of a "mutually acceptable third party arbitrator" as this is seldom a satisfactory solution. As long as you meet your obligations you really have no problem.

Exhibit No. 40  
Date: 4-6-05  
D. Hager  
T&T REPORTING

H/A0394



(including touchup painting and carpet cleaning), perform all necessary repairs and maintenance required to restore the cabin and property to its original condition as at closing, reasonable wear and tear excepted.

25. Owner shall receive 24 complimentary green fees during each calendar year their residence is in the Model Cabin Lease Back in 3(a) above, and the two year Rental Program in 3(b) above. Other customary user fees will apply. Rounds may not be used by renters, although special rates will be provided them. REMOVED

26. Owner will have the option to reserve a Resident Charter Golf Membership at a cost of Sixteen Thousand Dollars (\$16,000.00) to remain with the property without activation during the term of the Model Cabin Lease Back and extension (if any) and during the Cabin Rental period. Said purchase must be made prior to the expiration of the applicable period.

27. Owner may purchase the furniture installed in the model at the end of the Cabin Mode Lease Back period. The price will be no more than the cost to Seller of furnishing a similar model. At the present time these costs range between \$40,000 to \$60,000.00. Normal kitchen appliances approved as a part of all cabin offerings are the property of the Owner and are not considered furniture.

28. Purchaser has prepared two lists ("Punchlist") of items, one for the interior and one for the exterior as shown on the attached Interior Punchlist and Exterior Punchlists. The Interior Punchlist and Exterior Punchlist shall be handled separately as set forth below. NOTED AS EXHIBITS

For any punchlist items remaining to be completed after closing by the Seller, the parties agree to escrow an amount equal to two hundred percent (200%) of the parties' estimate to complete the punchlist items on the Interior Punchlist and Exterior Punchlist. Seller shall pay the costs of setting up and maintaining the escrow account. Ten days following receipt by the designated escrow agent of a letter from the project architect, certifying that the punchlist items have been substantially completed in a good workmanlike manner and further certifying that the Purchaser has been provided a copy of such certification by the architect, the escrow agent shall disburse the funds in the account to Seller or its designee. If the Purchaser objects to the certification of the architect, he shall notify the escrow agent of such objection in writing within said ten day period. If such written objection is received from Purchaser by the escrow agent, then the escrow agent shall withhold the funds and not make the disbursement provided above until joint instructions have been received from Seller and Purchaser or an order has been received from a court of competent jurisdiction. In the event Seller fails to complete the punchlist items within 90 days following establishment of the punchlist for the Interior Punchlist and 180 days following establishment of the punchlist for the Exterior Punchlist, and furnish escrow agent the certificate from the architect by said date, then Purchaser may have the work performed to correct the punchlist items and provide invoices therefor to the escrow agent for payment. The escrow agent may then make payment from the escrow fund for such invoices and provide copies of the invoices and the checks in payment thereof to Seller.

AFTER INSPECTION OF THE PROPERTY BY THE PURCHASER



Mr. Donald Harger  
Mr. Richard Allen  
Po Box 2826  
Jackson, WY 83001

Dec. 31, 2003

Dear Don and Dick,

I appreciate the effort that you have both shown to get the sale of the cabin units 24 and 23 completed. While we have all been working to that end, I have seen a genuine excitement that both of you share about being part of the Teton Springs Community. I am confident that you both believe in our ultimate success. I now have the copy of the final business points that you have both asked Teton Springs to incorporate in to your final Agreement to purchase.

Certificates of occupancy for both of your units were obtained several weeks ago. However, at the end of the week before Christmas Jim Gill informed me that you both wanted a new consolidated agreement to sign before closing. On the surface a document to tie up the original land contract and addendum did not appear to be significant. On review of the proposed consolidation, I found a number of new negotiation points, which we subsequently by mutual agreement, rejected. Those points are as follows.

- Property tax in the new agreement to be paid by Teton Springs and in the original agreement was the owners' responsibility.
- Complimentary golf rounds were added.
- 200% retainage on the punch list items were added.
- Membership date of activation and payment was extended by two years.
- A clause extending building and construction warranties was added.

Jim Gill, our staff and I have spent considerable time as have each of you on this document and as of Wednesday, December 31, 2003 I feel we have earned your trust and are prepared to move forward to close the deal. We want to uphold our original commitment to both parties and to work closely together both now and in the future.

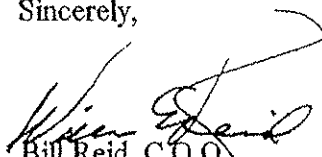
We feel that we have added significant value to your potential investment and need to get our original agreement closed or move on.

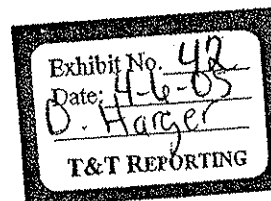
I am looking forward to closing and at closing will jointly sign all documents including the one we drafted on the 31<sup>st</sup>. I will extend the close date to January 5<sup>th</sup>, which should allow each party time to finalize documents.

> Should either the Hargers or the Allens choose not to close or be unable to close through no fault of Teton springs by January 5<sup>th</sup>, the original agreement will be canceled and Teton Springs will move forward with alternate plans to satisfy obligations on these properties.

It is our wish to proceed with the Hargers and Allens. I hope to see you at the closing table next week or today.

Sincerely,

  
Bill Reid, C.O.O.  
Teton Springs



H/A0049



REVIEW

Summary

Hoyer

12/31/03

ISSUES TO BE RESOLVED

T.S

1/12

① LENGTH OF WARRANTY

② ESCROW AMOUNT 10000

③ REVISED CABIN

LEASEHOLD & REVISED

CABIN RENTAL AGREEMENT

NOTE: Bill attached old  
Cabin purchase

Agreement w/ old terms  
for cabin lease + cabin rental

(\$200/mo or  
\$2400 -

not both

ALL SEASON RESORT COMMUNITY AS IS

own

**TAB “11”**

COPY

TETON SPRINGS  
TETON VALLEY IDAHO

TETON SPRINGS CONTRACT FOR PROPERTY SALE

EFFECTIVE DATE: January 7, 2004  
PURCHASER (S): Vladimir & Pamela Vukobratovic  
- DE ASSIGNS  
SELLER: TETON SPRINGS  
J & R Investments & MICH LLC

In consideration of the mutual covenants contained herein, and in further consideration of the purchase price specified below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, the below described real estate subject to the terms, conditions and obligations herein:

1. **Property:** The Purchaser agrees to buy and the Seller agrees to sell the premises commonly known as East River II and legally described as Block Tract number, 9 Lot, 24 with improvements located in the Teton Springs Community ("Community"), a planned development located in Teton County, Idaho, such Lot being more particularly shown and identified on that certain plat of survey recorded in the Teton County Clerk's Office under Instrument #141372, dated February 13, 2001, as the same has been or may be amended, such plat being incorporated herein, and made a part hereof, by this reference.
2. **Purchase Price and Method of Payment:** Purchaser represents that Purchaser will have, at the Date of Closing, sufficient cash (together with the loan, if any, described herein) to complete the purchase hereunder. The purchase price of the Property shall be: \$ 745,000, to be paid as set forth in subparagraph A or B [select A or B, the option not selected is not a part of the Agreement] and as shown below:
  - ☐ A. All Cash at Closing. At Closing, Purchaser shall pay the purchase price to seller in cash, or its equivalent. Purchaser's obligation to close shall not be contingent upon Purchaser's ability to obtain financing.
  - ☒ B. Where New Loan to be Obtained. This Agreement is made conditional upon Purchaser's "ability to obtain" (as defined herein) a loan in the principal amount of 80 percent of the purchase price to be evidenced by a

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promissory note and secured by a mortgage on the Property. Purchaser shall be obligated to close this transaction if Purchaser has the ability to obtain a loan as set forth above. "Ability to obtain" means that Purchaser is qualified to receive the loan described herein based upon lender's customary and standard underwriting criteria. Proceeds of said loan, together with any balance of the purchase price shall be paid in cash or its equivalent by Purchaser to Seller at closing.

Purchaser agrees to make application for said loan within ten (10) days from date of this Agreement, and pursue said application diligently and in good faith, to execute all papers, to provide all documents, to perform all other actions necessary to obtain such loan and to accept such loan if approved by lender. Should Purchaser not apply for said loan in the time specified above, Seller may declare Purchaser in default and Purchaser shall have five (5) days to cure said default by providing Seller written evidence of formal loan application.

If within thirty (30) calendar days from the date this Contract becomes a binding agreement Seller has not received written notice from Purchaser that Purchaser is unable to qualify for a loan as described herein, then said financing contingency shall be deemed waived by Purchaser and, thereafter, a failure of the Purchaser to close because of the inability to obtain a loan shall be a default by Purchaser. Upon automatic waiver of the contingency, the future inability of the Purchaser to obtain a loan due to the lack of credit worthiness shall be considered a default hereunder. Purchaser acknowledges and represents that he has not relied upon the advice or representation, if any, of Seller or any salespersons representing Seller regarding the type of loan or the terms of any particular loan program to be obtained by Purchaser. Purchaser shall have the responsibility of independently investigating and choosing the lender, type of loan, and said loan program to be applied for by purchaser in connection with this transaction. Purchaser agrees to hold harmless Seller and any salespersons representing Seller, from any claims or loss whatsoever arising out of Purchaser's application and commitment for any loan, and with respect to the terms of instruments evidencing or securing said loan.

3. **Earnest Money:** Purchaser has paid to the Escrow Agent identified below \$10,000, as earnest money, which earnest money is to be applied as part payment of the purchase price at time of closing. Escrow Agent shall deposit the earnest money in the escrow account upon receipt. In the event the earnest money check is returned for insufficient funds or otherwise not honored, Seller shall in its discretion have the right to terminate this Agreement. The earnest money may only be disbursed: (a) at closing, (b) upon written agreement signed by all parties, (c) upon Court order, (d) upon breach by either party to the non-breaching party, (e) upon failure of any contingency herein, or (f) as otherwise set forth herein.

Escrow Agent: 1ST AMERICAN TITLE 208 354 2771  
84 MAIN AVE 993 10 AMO 83422

4. **Other Terms And/Or Conditions:** this Agreement is made subject to the following special terms, considerations and /or contingencies which must be

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satisfied prior to closing

5. **Items Included & Excluded In This Sale:** All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include all attached floor coverings, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, irrigation fixtures and equipment, all water systems, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the price and condition of the property are acceptable.

(a) ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE:

*Washer Dryer, All Appliances: Refrigerator, Oven, microwave, dishwasher, Water Heaters etc*

(b) ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:

*Furniture specifically provided by Jackson Moore Decorators for Model finishing*

6. **Conveyance of Property:** Seller warrants that it currently has good and marketable, fee simple title to the property and shall convey the property by warranty deed to Purchaser at closing. Good and marketable title means insurable title at normal rates without exception except for permitted title exceptions and preprinted standard title exceptions. Conveyance shall be free of monetary liens or encumbrances, subject to preprinted standard title exceptions and the following permitted title exceptions, to-wit:

- (a) Property taxes for the year of sale;
- (b) Such state of facts as would be disclosed by an accurate survey and inspection of the premises;
- (c) The exact amount of acreage in the property;
- (d) All such other covenants, conditions, restrictions and easements of record as may now affect the Property;
- (e) All those matters shown on the plat of survey referred to above, as has been or may be amended;
- (f) That certain Master Declaration of Protective Covenants for Teton Springs Golf & Casting Club, dated August 15, 2001, as amended (the "Declaration");
- (g) Restrictions relating to building upon or using the Property by virtue of any building or zoning ordinance, restrictive covenants or other law of any entity of government or public authority; and
- (h) Any mortgage placed upon the Property by Purchaser in connection with the closing of the sale of the above-described Lot.

7. **Title Evidence:** A title insurance binder or policy, or title opinion, will be issued to Purchaser in connection with the transaction, at the expense of Seller, and will show that Seller, immediately prior to the conveyance of the Lot to Purchaser, is vested with title to the Lot, subject only to the title exceptions provided for in paragraph 6 of this contract which Purchaser, by execution hereof, specifically approves.

8. **Closing Date:** Closing shall take place on or before January 12, 2004 <sup>2004</sup> ~~January 12, 2003~~. Possession of the Property shall be granted no later than the Closing Date. SELLER may assess a 1% penalty on the total purchase price for each 15-day period that closing is delayed by no fault of SELLER.

9. **Closing Expenses:** The SELLER will pay for a title insurance standard coverage owners' policy, recording fees for the release of encumbrances, and preparation of the warranty deed. The BUYER will pay for any extended coverage on the title insurance policy, appraisal or any other fees and costs associated with BUYER's finance of the property, recording fees for the warranty deed and financing documents, if any. BUYER and SELLER agree to split equally the escrow agents' closing fees.

10. **Prorations:** General taxes for the year of closing based on the most recent calendar year assessment, irrigation assessments, prepaid rents, water rights, association fees, dues or assessments, utilities, insurance premiums and interest on encumbrances, if any and if applicable, will be prorated as of the Closing Date. If on the Closing Date the amount of such taxes, assessments and fees is not yet fully ascertained for the current year, the apportionment of taxes has been estimated on

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the basis of the best information available, and such estimate shall be conclusive between the parties.

11. **INSPECTION:**

(A) BUYER chooses ☐ to have inspection ☐ not to have inspection. If BUYER chooses not to have inspection skip section 12. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYERS' expense. BUYER shall, within 10 business days of acceptance, complete these inspections and give to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER's own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B) FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection", HUD 92564-CN must be signed on or before execution of this agreement.

(C) SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

- i. If BUYER does not within the strict time period specified give to SELLER written notice of disapproved-of items, BUYER shall conclusively be deemed to have: a) completed all inspections, investigations, review of applicable documents and disclosures; b) elected to proceed with the transaction and c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.
- ii. If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 10 business days in which to respond in writing. The SELLER, at their option may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYER's inspection contingency.
- iii. If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair, correct or cancel the transaction. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnity and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

12. **Lead Paint Disclosure:** The subject property is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards.

Sum PMW

13. **Square Footage Verification:** BUYER is aware that any reference to the square footage of the real property or improvements is approximate.
14. **Teton Spring's Covenants:** Teton Springs will not provide or complete roads, sewer, water, gas, electric, or telephone service, or recreational facilities except:
- (a) The above-described property is or will be located on a paved road (for purposes of this Contract, "paved" means concrete or pavement with bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated), which has been or will be built to standards established by the state or the unit of local government in which the Community is located, and the Teton Springs Master Association is obligated to accept the road for maintenance;
  - (b) Water lines have been or will be extended to the above-described property and service is to be provided by Teton Springs Water and Sewer;
  - (c) Sewer lines have been or will be extended to the above-described property and service is to be provided by Teton Springs Water and Sewer.
  - (d) Electric service lines have been or will be extended to the above-described property and service is to be provided by Fall River Electric Company;
  - (e) Telephone lines have been or will be extended to the above-described property and service is to be provided by Teton Telecom or a similar provider; and
  - (f) Seller does not guarantee the construction of any proposed recreational facilities within or adjacent to the Teton Springs Community other than those recreational facilities as set forth in Exhibit "B" attached hereto.

Teton Springs represents that it has entered into a Development Agreement for Teton Springs Subdivision, Phase 1, with Teton County for the purpose of guaranteeing the full and satisfactory completion of the improvements identified within items (a) – (e) of this Section 14. In accordance therewith, the Teton Springs has also established an Irrevocable Letter of Credit to the benefit of the Teton County Commissioners in an effort to insure completion of the items set forth within this Section.

With respect to the above-referenced items (b) – (e), please note the following information with respect to rates and fees which are to be paid by the Purchaser:

- A. Fall River Electric Company will provide electric service at customary and usual rates and fees.
  - B. Teton Telecom or a similar provider, will provide telephone service at customary and usual rates and fees.
15. **Completion of Facilities:** The only representations made by Teton Springs with respect to the completion of roads, sewer, water, gas, electric, telephone service and recreational facilities are as set forth in Section 9 and no other representations regarding the same have been made or relied upon by Purchaser. All completion dates for roads, sewer, electric and telephone service and recreational amenities as

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set forth herein are subject to delays and time extensions caused by acts of God, strikes, or manpower shortages, acts of governmental authorities, labor conditions beyond the control of Seller or any other cause beyond Seller's control or other grounds to establish impossibility of performance in the State of Idaho.

16. **Golf Lot Disclosure:** The Property is located or may be located adjacent to or in close proximity to a Golf Course and Club. Purchaser acknowledges that Purchaser has assessed the location of the Property in relation to the lay out and operation of the Golf Course and Club and acknowledges that owning the Property adjacent to or in close proximity to the Golf Course and Club involves certain risks which may have an impact and effect upon Purchaser's enjoyment of the Property. Purchaser acknowledges that such risks may include, by way of example and not as a limitation, noise associated with the playing of golf and with using the Golf Course and Club facilities; golf balls being hit into Purchaser's Property, with the potential of causing bodily injury or physical damage to any improvements or personality; and golfers entering Purchaser's Property to retrieve errant golf balls. Purchaser assumes all such risks and agrees that neither Seller, Teton Springs, the Association, nor any other entity owning or managing the Golf Course or Club, or any portion thereof, shall be liable to Purchaser or to any person claiming any loss or damage, including, without limitation, actual, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof. ~~Purchaser hereby agrees to indemnify and to hold harmless Seller, Teton Springs, the Association, or any other entity owning or managing the Golf Course or Club, against any and all claims by Purchaser's guests, invitees, or licensees, of any nature whatsoever, based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof, including, without limitation, all costs of litigation and attorneys fees incurred by Seller, Teton Springs, the Association, or any other entity owning or managing the Golf Course or Club, or any portion thereof.~~ Nothing contained in this paragraph 16 shall restrict or limit any power of the Seller, Teton Springs, the Association or any other entity owning or managing the Golf Course or Club, or any portion thereof, to change the design of the Golf Course or Club, or of any other portion of the Golf Course or Club and related facilities, and any such change shall not be deemed or considered to have nullified, amended, altered, restricted, or impaired the covenants, obligations, and duties of Purchaser contained herein.

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17. **Purchaser's Acknowledgements Regarding Teton Springs Golf Club:** (NOTICE: FAILURE TO COMPLY WITH THIS PART COULD PREJUDICE YOUR ABILITY TO OBTAIN A MEMBERSHIP IN THE TETON SPRINGS GOLF CLUB.)

X um PMW  
Purchaser's Initials

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- (a) Purchaser explicitly acknowledges that **PURCHASER HAS FROM THE DATE HEREOF UNTIL THE LATER OF SIXTY (60) DAYS FROM THE DATE OF CLOSING HEREIN OR FROM COMPLETION OF THE GOLF COURSE TO OBTAIN APPROVAL AND ACQUIRE MEMBERSHIP IN THE TETON SPRINGS GOLF CLUB.** Memberships, which are not acquired by Purchaser by said date, may be offered on a first come, first served basis to other owners and non-owners. Accordingly, owners who do not acquire a membership as of said date may acquire a membership at a later date **only if one is then available** and only upon payment of the initiation deposit, which is **then** charged for membership. **NOTICE: FAILURE TO ACQUIRE A MEMBERSHIP AT CLOSING MAY PROHIBIT THE PURCHASER FROM HAVING A MEMBERSHIP AVAILABLE.** Subsequent purchasers of Lots in the Teton Springs Community from members are guaranteed the availability of a membership if the selling member resigns his or her membership and arranges for the subsequent purchaser to acquire such membership. If a membership is not available, the Club of those persons who desire membership in the Club will establish a waiting list. Priority for available memberships will be given to property owners in the Teton Springs Community on the waiting list. The Club may, in its sole and absolute discretion, reserve memberships for sale to future purchasers of property in the Teton Springs Community. Memberships, which are reserved by the Club, will not be considered to be available memberships, and the Club may not be compelled to sell them.
- (b) The persons interested in acquiring a membership in the Club should **IMMEDIATELY UPON THE SIGNING OF THIS CONTRACT** submit a fully executed, completed application for membership in the Club. If the Club accepts the applicant, the Club will send the applicant notice of his or her acceptance. In the event the Club does not act favorably upon a person's application, the Club will so notify the applicant. Within the sixty (60) day period set forth above, the applicant, if accepted in the Club, shall pay to the Club the required initiation deposit, dues and any other charges as may be requested as a part of the membership. Upon payment of all deposits and required charges, the Club will then forward to the applicant a membership card for the member and his or her family members who are entitled to use the Club facilities under the membership, together with any other information deemed pertinent by the Club.
- (c) Purchaser acknowledges that the Club reserves the right, but not the obligation, to convert the Club facilities to an equity membership form of ownership. Initiation deposit members who acquire an equity membership will be entitled to a credit toward the membership contribution required for equity membership in the amount of the initiation deposit, which they previously paid.
18. **Purchaser's Covenants:** The Purchaser covenants and acknowledges that: (a) Purchaser has received copies of the Declaration and agrees to be bound by the terms and conditions of such document; (b) Purchaser or his or her spouse has made a personal, on-the-property inspection of the above-described property prior to the

signing of this Contract; (c) Purchaser has received no offer of gifts, trips, dinners, or other such promotional techniques to induce him/her to visit the Teton Springs Community or to execute this Contract, either by direct mail or telephone; (d) BUYER acknowledges receipt of a good-faith written estimate of the cost of maintaining the roads over the first ten (10) years of ownership, which estimate is attached as Exhibit "A" hereto and incorporated herein by this reference; and (e) Purchaser has received a good-faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.

19. **The Teton Springs Master Association, Inc.:** There has been or will be created the Teton Springs Master Association, Inc. Purchaser shall be a member of the Association and Purchaser's Property shall be subject to assessment by the Association, which assessment is for the purposes set forth in the Declaration. Purchaser hereby acknowledges that it is aware of the rights of the Association to levy and enforce assessments against it and Purchaser agrees to pay promptly all such assessments, which are properly made against him by the Association.
20. **Architectural Requirements:** Architectural approval and control requirements and restrictions are set forth in the Declaration. Such provide that no original construction, improvements, buildings, structures, or development of any kind whatsoever shall commence or be carried out on any lot until approved in writing by the Development Review Committee. Purchaser agrees that the actual construction on the property will have no material variation from the plans approved by the Development Review Committee unless the Development Review Committee shall have also approved such variations in writing. The Development Review Committee may grant or deny approval of Purchaser's plans on any grounds, including purely aesthetic considerations. All modifications, additions or alterations made on or to existing residential units or structures must obtain the approval of the Development Review Committee, as that term is defined in the Declaration.
21. **Default:** If Purchaser fails to perform his or her obligation under this Contract or to close the sale provided herein, Seller may, at its option, elect to enforce this Contract by declaring this Purchase Contract in default and retain any and all Earnest Money as full liquidated damages, in which event the parties will be released from any further obligation or liability to each other. Purchaser and Seller agree that the exact amount of Seller's actual damages would be impossible to calculate and that such liquidated damages are reasonable. In the event that this sale fails to close due to default on the part of the Seller, or inability of Seller to deliver "good and marketable fee simple title" to the Lot, then upon written notice from Purchaser, Seller shall return all Earnest Money, and the parties shall be released from any and all other further obligations hereunder. Neither Purchaser nor Seller shall have any further rights or remedies on account of any default except as stated in this paragraph.
22. **Condition of Property:** Purchaser and Seller hereby agree that Purchaser shall buy the Property in an "as is" condition, and Seller has not made any commitments or accepted any obligations for further work on the Property other than as expressly

set forth herein. Purchaser acknowledges that Seller has not made any pledges, covenants or commitments in regard to the development of the Teton Springs Community which has induced a Purchaser of the Property to purchase said Property except as stated in this Contract.

23. **Sole Agreement:** This Contract supersedes any and all understandings and agreements between the parties and constitutes the sole and entire contract between the parties. No oral statements or representations whatsoever shall be considered a part hereof. Any modifications must be in writing and acknowledged by the parties hereto.
24. **Binding Effect:** This Contract is binding upon the heirs, personal representatives, successors and permitted assigns of the parties.
25. **Nonassignability:** Purchaser's interest in this Contract may not be transferred or assigned, in whole or in part, without the prior written consent of Seller. In the event that Purchaser assigns or transfers, or attempts to assign or transfer, his or her interest hereunder without Seller's written consent having first been obtained, Seller may, at its option, treat such event as a default by Purchaser hereunder, and shall not be obligated to recognize the Assignee or the Transferee.
26. **Survival of Closing:** The terms and conditions of this Contract shall survive the Closing and delivery of the warranty deed. ~~Purchaser, on behalf of himself and his successors in title, agrees that in the event of any litigation to enforce this Contract, or in the event Seller is voluntarily or involuntarily made a part to any litigation concerning this Contract, Purchaser shall protect and hold the Seller harmless from any and all costs in connection with such litigation, including reasonably attorney's fees and court costs incurred by the Seller.~~ N/A WUE PMW
27. **Notices:** Notices hereunder shall be in writing and shall be delivered by hand, courier or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party as first set forth above. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or courier delivery or on the date received.
28. **Idaho Law:** This Contract and all relationships between the parties hereto shall be construed, interpreted and enforced in accordance with the laws of the State of Idaho.
29. **Time of Essence:** Time is of the essence in this Contract, except as otherwise specifically provided.
30. **Severability:** The provisions of this Contract are intended to be independent. In the event that any provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Contract.
31. **Full Knowledge:** Purchaser and Seller acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions and the effect of all the provisions of this Contract and every part of the Declaration, the exhibits thereto, the amendments thereto, the By-Laws, the Supplemental Declaration, the Articles of Incorporation of the Association and all parts of the Purchaser's Package.



32. **Real Estate Brokerage Commission:** Seller shall be responsible for all real estate commissions in connection with the transaction described herein to the Broker and to any other agents, or co-brokers only if they are listed below. In no event shall Seller have any obligation to pay any real estate commission except in the event of the consummation of the closing of this transaction pursuant to the terms of this Contract. Neither Seller nor Broker has acted as agent in this transaction for the Purchaser. The co-broker listed below, if any, shall receive a total commission at Closing of 2 1/4 % of the Purchase Price. Purchaser acknowledges that Purchaser has not contracted, negotiated, or otherwise dealt with any real estate broker not specifically identified in this Contract in connection with any aspect of this transaction. Purchaser agrees to indemnify and to hold Seller harmless from any claim made by any real estate broker or any other person asserting any claim for any commission, fee, salary, or other payment for any services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction, except for any claim for such services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction by any person specifically identified herein as a real estate broker.
33. **Disclaimer:** Seller and Purchaser acknowledge that they have not relied upon the advice or representation, if any, of Broker (or Broker's associated salespersons) relative to any consequences of this Contract and the sale of the Property, the purchase and ownership of the Property, the condition of the Property, the availability of utilities to the Property, or the investment potential or resale value of the Property. Seller and Purchaser both acknowledge that if such matters are of concern to them, they have sought and obtained independent advice. Purchaser acknowledges that Broker (or Broker's associated salespersons) are representatives of the Seller and are not acting by or for Purchaser in any capacity.
34. **Revocation:** This Contract may be revoked at the option of Purchaser until midnight of the seventh (7<sup>th</sup>) day following the signing of this Contract. This provision is non-waivable.
35. **Definitions:** The words used in this Contract shall have the same meaning as set forth in the Declaration and any amendment applicable thereto, as recorded or to be recorded in the land records of Teton County, Idaho, which, by this reference, are incorporated herein.

*Includes complimentary Resident  
Charter membership.*

**Special Stipulations:** *Seller agrees to lease back  
unit beginning at closing @ \$3600.00 per  
month for one year use exclusively as a  
second home. Seller agrees to either lease back the  
unit as a second home or additional year or guarantee  
rental of the unit (seller's choice on model use or rental  
use in the second year) at the same rate of \$3600.00  
per month. If T.S. puts unit in rental pool, furniture is  
T.S. Responsibility.  
Buyer will be entitled to 3 complimentary weeks of stay  
for 2 years (no holiday dates) at an available T.S. Rental unit  
occupancy limited to 4.*

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IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals and executed this contract in duplicate on the dates set forth by the signature (the contract date being the date that the last party signs this agreement).

Print Purchaser's Name:

VLADIMIR J. & PAMELA M. KOKO

(SEAL)

(SEAL)

PURCHASER:

Vladimir J. Koko & P.

Pamela M. Koko

Print Purchaser's Address and Phone Numbers:

2860 N. PRESTWICK WAY

Address

LELANDO, FL. 34461

Address

352 249 4494

Home Phone

352 560-0333

Business Phone

352 249 4494

Facsimile

Print Purchaser's County of Residence:

CITRUS

Signed as to Purchaser this 7th  
day of JANUARY, 200 4.



EXHIBIT "A"

TETON SPRINGS GOLF & CASTING CLUB

CONTRACT FOR SALE - ADDENDUM

RE: Paragraph 13(d), Good Faith Estimate, Road Maintenance

FROM: Teton Springs Golf & Casting Club, LLC  
d/b/a Teton Springs

To:  
(Purchaser)

RE:

The estimated cost of maintaining the roads within the Teton Springs Community over the first ten years of ownership is approximately \$300,000.00. Said expense is to be incurred by the Teton Springs Master Association, Inc. which will collect monies through the levy of assessments in accordance with the Declaration. Purchaser will only be responsible for their share of the expenses incurred. The developer will pay for the shares held by unsold platted lots.

SELLER: Teton Springs Golf & Casting Club, LLC d/b/a Teton Springs

By: Wan E. Kail  
Its Authorized Representative

PURCHASER:

Vladimir J. Vlebo ED.  
Pamela M. Vlebo

EXHIBIT "B"

TETON SPRINGS GOLF & CASTING CLUB

CONTRACT FOR SALE - ADDENDUM

RE: Paragraph 13(e), Good Faith Estimate, Completion of Improvements

FROM: Teton Springs Golf & Casting Club, LLC d/b/a Teton Springs

To:  
(Purchaser)

RE: Lot No.

<u>Facility Providing Maintenance</u>	<u>Party Responsible for</u>	<u>Estimated Year of Completion</u>
A - Roads	Currently Teton Springs Golf & Casting Club upon relinquishment of maintenance to owner's association, Teton Springs Master Association, Inc.	2003
B - Water	Teton Springs Water and Sewer	2002
C - Sewer	Teton Springs Water and Sewer	2002
D - Electricity	Fall River Electric Company	2002
E - Telephone	Tetontel	2002
F - Other Existing	Recreational Facilities or Proposed Amenities	
(i)	18 hole golf course, practice range, and practice facilities, putting greens and related cart paths/bridges and ancillary/ features (9 holes )	2003
(ii)	9 hole par three executive golf course and golf academy.	2004
(iii)	Spring Creek fishing habitat/pond areas - fishing habitat.	2004
(iv)	Nordic skiing facility (golf course/open space).	2004
(v)	Walking paths, bike paths, equestrian trails within the project.	2004
(vi)	Access to National Forest by existing public access points.	2004
(vii)	Western club facility.	2004
(viii)	Tennis facility/health club/swimming pool and ancillary support facilities.	2005

Teton Springs, LLC  
Cabin Model Lease Agreement

RECEIVED from Teton Springs, LLC herein after referred to as "Tenant", the sum of \$3600<sup>00</sup> - PEN MO (\$ 3600<sup>00</sup>), To from V+R INVESTMENT, herein after referred to as "Owner".




1. **TERM:** The term hereof shall commence on approximately 11/12/04, and continue (check one of the two following alternatives): (1) 11/12/06 until the morning of approximately 11/12/06 for total rent of \$3600<sup>00</sup>; (2) Tenant and Owner may re-negotiate lease extension at end of term. Tenant agrees monthly lease payment of \$ 3600 -. 24000 lease for rent in year
2. **RENT:** Rent shall be \$ 3600 per month, payable in advance, upon the 1<sup>st</sup> day of each calendar month to Owner or his authorized agent, at the following address: 2860 NORTH PRESTWICK Way, LEANED FC, 34461 or at such other place as may be designated by Owner from time to time. In the event rent is not paid within five (5) days after due date, Tenant agrees to pay a late charge of \$25.00 plus interest at 1.5% per month on the delinquent amount payable to Owner. Tenant further agrees to pay \$25.00 for each dishonored bank check payable to the Owners. The late charge period is not a grace period, and Owner is entitled to make written or verbal demand for any rent unpaid on the second day of the rental period. Any unpaid balances remaining after termination of occupancy are subject to 1.50% interest per month or the maximum rate allowed by law, whichever is less.
3. **UTILITIES:** See Attachment A.
4. **USE:** The premises shall be used exclusively as a model home.
5. **ANIMALS:** No animals are allowed on the premises without the prior consent of the owner. If acceptance is granted for animals, Tenant understands and agrees that all pet hair and dander must be removed and additional time will be required upon the departure cleaning.
6. **HOUSE RULES:** Tenant agrees to abide by any and all house rules, whether promulgated before and after the execution hereof, including, but not limited to, rules with respect to noise, odors, disposal of refuse, animals, parking and use of common areas. Tenant shall not have a waterbed without prior consent of the Owner.
7. **ORDINANCES AND STATUTES:** Tenants shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the use of the premises.
8. **ASSIGNMENT AND SUBLETTING:** Tenant shall not assign this agreement without prior written consent of the owner.
9. **MAINTENANCE, REPAIRS, OR ALTERATIONS:** Tenant acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Owner or Owner's agent may at any time give Tenant a written and/or videotaped

11/12/04  
[Signature] Tenant \_\_\_\_\_ Tenant - 1- [Signature] Owner [Signature] Owner

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inventory of furniture and furnishings in good condition and repair, unless he objects thereto in writing within five (5) days after receipt of such inventory. Tenant shall, at his own expense, and at all times, therein and shall surrender the same, at termination hereof, **IN AS GOOD AND CLEAN CONDITION AS RECEIVED**. Tenant shall be responsible for any damage caused by his negligence and that of invitees and guests. Tenant shall not paint, paper or otherwise redecorate or make alterations to the premises without the prior written consent of the Owner. Whether property is occupied or unoccupied, Tenant shall irrigate and maintain any surroundings grounds including lawns and shrubbery, and keep the same clear of rubbish or weeds, if such grounds are a part of the premises and are exclusively for the use of the Tenant. Tenant shall not commit any waste upon said premises.

10. **INVENTORY:** Owner or owner's agent may be at any time give Tenant a written or videotaped inventory of furnishings, fixtures and equipment on the premises and Tenant shall be deemed to have possession of all said furnishings, fixtures and equipment in full, in good condition and repair, unless he objects thereto in writing within five (5) days after receipt of such inventory. Owner acknowledges that Tenant has arranged for unit furnishing and until Owner arranges for purchase of such furnishing, has exclusive ability to replace or change out furnishing. Wall covering, window treatments and standard finish items as agreed at purchase may not be changed.
11. **DAMAGES TO PREMISES:** If the premises are so damaged by fire or from any other cause as to render them uninhabitable, then either party shall the right to terminate this Lease as of the date on which such damage occurs, through written notice to the other party, to be given within fifteen (15) days after occurrence of such damage, except that should such damage or destruction occur as the result of the abuse or negligence of Tenant, or its invitees, then Owner only shall have the right to termination. Should this right be exercised by either Owner or Tenant, then rent for the current month shall be prorated between parties as of the date the damage occurred and any prepaid rent and unused security deposit shall be refunded to Tenant. If this Lease is not terminated, then Owner shall promptly repair the premises and there shall be a proportionate deduction of rent until the premises are repaired and ready for Tenant's occupancy, unless damages were caused by Tenant's negligence. The proportionate reduction shall be based on the extent to which the making of repairs interfaces with Tenant's reasonable use of the premises.
12. **ENTRY AND INSPECTION:** Owner or Owner's Agent shall have the right to enter the premises: (a) in case of emergency; (b) to inspect for cleanliness, maintenance and to make sure that the terms of the lease are being followed; (c) to make necessary or agreed repairs, decorations, alterations, improvements supply necessary or agreed services, exhibit the premises to prospective or actual purchasers, mortgages, tenants, workmen, or contractors; (d) when Tenant has abandoned or surrendered the premises. Except under (a) and (d), entry may not be made other than during the normal business hours, and not without less than 24 hours prior notice to Tenant.

 Tenant \_\_\_\_\_ Tenant - 2-  Owner  Owner

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18. **WAIVER:** No failure of Owner to enforce any term hereof shall be deemed a waiver. The acceptance of rent by Owner shall not waive his right to enforce any term hereof.
19. **NOTICES:** Any notice which after either party may give or is required to give, may be given by mailing the same, certified mail, to Tenant at the premises or to the Owner at the address shown herein or at such other place as may be designated by the parties from time to time.
20. **HOLDING OVER:** Any holding over after expiration hereof, with the consent of Owner shall be construed as a month-to-month tenancy in accordance with the terms hereof, as applicable, until either party shall terminate the same by giving the other party **thirty (30) days written notice** delivered by certified mail.
21. **TIME:** Time is of the essence of this agreement.      **ADDITIONAL TERMS AND CONDITIONS** is set forth at the bottom of this page, and Attachment A.
22. **COUNTERPARTS, FACSIMILIES:** This instrument may be executed in multiple counterparts, each of which may be an original, and all of which together shall constitute one and the same instrument. A telefax counterpart hereof executed by a party, shall have the same force and effect as an original counterpart hereof executed by such party.

**ENTIRE AGREEMENT:** The foregoing constitutes the entire agreement between the parties and may be modified only in writing by both parties. The following Exhibits, if any, have been made a part of this agreement before the parties' execution hereof: Attachment A and Tenant Application.

**The undersigned Tenant hereby acknowledges receipt of a copy hereof.**

**Dated:** \_\_\_\_\_

**By** \_\_\_\_\_

**ACCEPTANCE**

Valentin M. [Signature] as Mg Partner  
Owner Date  
for V&P Investments  
1/29/04




[Signature] 1/29/04  
Tenant Date  
Tenant Address:



13. **INDEMNIFICATION:** Owner, Owner's Agent and its employees shall not be liable for any damage or injury to Tenant, or any other person, or to any other property, occurring on the premises or any part thereof, or in common areas thereof, unless such damage is the proximate result of the gross negligence or willful unlawful act of Owner, Owner's Agent or its employees. Tenant agrees to hold Owner harmless from any claims for damages, no matter how caused, except for injury or damages for which Owner is legally responsible.
14. **PHYSICAL POSSESSION:** If Owner is unable to deliver possession of the premises at the commencement hereof, Owner shall not be liable for any damage caused thereby, nor shall this agreement be void or voidable, but Tenant shall not be liable for any rent until possession is delivered. Tenant may terminate this agreement if possession is not delivered within 30 days of the commencement of the term hereof.
15. **DEFAULT:** If Tenant shall fail to pay rent when due, or perform any term hereof, after not less than seven (7) days written notice of such default given in the manner required by law, the Owner, at his option, may terminate all rights of Tenant hereunder, unless Tenant, within said time, shall cure such default. If Tenant abandons or vacates the property, while in default of the payment of rent, Owner may consider any property left on the premises to be abandoned and may dispose of the same in any manner allowed by law. In the event the Owner reasonably believes that such abandoned property has no value, it may be discarded. All property on the premises is hereby subject to a lien in favor of Owner for the payment of all sums due hereunder, to the maximum extent allowed by law.
16. **OWNER PRIVILEGE:** During the term of this agreement 2 year(s), on a six (6) month advance reservation notice Owner will be guaranteed three (3) weeks or twenty-one (21) days of lodging provided by Teton Springs at a NO rental fee. Customary charges for housekeeping and incidental costs will apply.

In the event of a default by Tenant, Owner may elect to (a) continue lease in effect and enforce all his rights and remedies hereunder, including the right to recover the rent as it becomes due, or (b) at any time, terminate all of Tenant's rights hereunder and recover from Tenant all damage he may incur by reason of the breach of the lease, including the cost of recovering the premises, and including the worth at the time of such termination, or at the time of an award if suit be instituted to enforce this provision, of the amount by which the unpaid rent for the balance of the term exceeds the amount of such rental loss which the Tenant proves could be reasonably avoided.

17. **ATTORNEY'S FEES:** In any legal action brought by either party to enforce the terms hereof or relating to the demised premises, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee. Disputes to be addressed in Teton County Idaho courts under Idaho Law.

 Tenant \_\_\_\_\_ Tenant - 3-  Owner  Owner

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Teton Springs, LLC  
Attachment A

**UTILITIES AND SERVICES ADDENDUM**

Utilities and services shall be handled as follows: (cross out non-responsible party where applicable).

- Telephone: Owner / Tenant
- Satellite / Cable Television: Owner / Tenant
- Propane / Utility Bills: Owner / Tenant
- Snow Plowing of Driveway(s): Owner / Tenant
- Shoveling of the Roof: Owner / Tenant
- The property must be plowed and shoveled whether occupied or unoccupied by the tenant. Snow levels shall not prevent access to property.
- Snow plowing of the city streets shall be paid for by the HOA dues and Tenant agrees to pay for the plowing of the driveway. Property will be kept accessible year-around whether occupied or unoccupied by the Tenant.
- Garbage collection and payment will be the responsibility of: Owner / Tenant
- Yard maintenance shall be provided and paid for by: Owner / Tenant Lawn care must be provided at least weekly whether ~~is~~ property is occupied or unoccupied by Owner.
- Tenant will provide a weekly cleaning of the property at Tenant's expense. Upon departure, tenant will leave the property in as good and clean condition as when arrived.

OTHER: Tenant agrees to pay <sup>liability for property</sup> insurance, maintenance and all utilities during terms of this lease and extensions. Owner is responsible for property tax <sup>and owners insurance and mortgage</sup>

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Wuf  
PMW

Wuf Tenant \_\_\_\_\_ Tenant - 5- Wuf Owner PMW Owner

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**TAB “12”**

# TETON SPRINGS

TETON VALLEY IDAHO

## TETON SPRINGS CONTRACT FOR PROPERTY SALE

EFFECTIVE DATE: March 6, 2004

PURCHASER (S): Bill Chipman or assigns

SELLER

V & R Investments

In consideration of the mutual covenants contained herein, and in further consideration of the purchase price specified below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, the below described real estate subject to the terms, conditions and obligations herein:

1. **Property:** The Purchaser agrees to buy and the Seller agrees to sell the premises commonly known as 18 Bannock Circle and legally described as Block/Tract number, 9 Lot, 24 with improvements located in the Teton Springs Community ("Community"), a planned development located in Teton County, Idaho, such Lot being more particularly shown and identified on that certain plat of survey recorded in the Teton County Clerk's Office under Instrument #141372, dated February 13, 2001, as the same has been or may be amended, such plat being incorporated herein, and made a part hereof, by this reference.
2. **Purchase Price and Method of Payment:** <sup>\$875000<sup>00</sup> WR</sup> Purchaser represents that Purchaser will have, at the Date of Closing, sufficient cash (together with the loan, if any, described herein) to complete the purchase hereunder. The purchase price of the Property shall be: \$ 850,000, to be paid as set forth in subparagraph A or B [select A or B, the option not selected is not a part of the Agreement] and as shown below:
  - ☐ A. All Cash at Closing. At Closing, Purchaser shall pay the purchase price to seller in cash, or its equivalent. Purchaser's obligation to close shall not be contingent upon Purchaser's ability to obtain financing.
  - ☐ B. Where New Loan to be Obtained. This Agreement is made conditional upon Purchaser's "ability to obtain" (as defined herein) a loan in the principal amount of 80 percent of the purchase price to be evidenced by a

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promissory note and secured by a mortgage on the Property. Purchaser shall be obligated to close this transaction if Purchaser has the ability to obtain a loan as set forth above. "Ability to obtain" means that Purchaser is qualified to receive the loan described herein based upon lender's customary and standard underwriting criteria. Proceeds of said loan, together with any balance of the purchase price shall be paid in cash or its equivalent by Purchaser to Seller at closing.

Purchaser agrees to make application for said loan within ten (10) days from date of this Agreement, and pursue said application diligently and in good faith, to execute all papers, to provide all documents, to perform all other actions necessary to obtain such loan and to accept such loan if approved by lender. Should Purchaser not apply for said loan in the time specified above, Seller may declare Purchaser in default and Purchaser shall have five (5) days to cure said default by providing Seller written evidence of formal loan application.

If within thirty (30) calendar days from the date this Contract becomes a binding agreement Seller has not received written notice from Purchaser that Purchaser is unable to qualify for a loan as described herein, then said financing contingency shall be deemed waived by Purchaser and, thereafter, a failure of the Purchaser to close because of the inability to obtain a loan shall be a default by Purchaser. Upon automatic waiver of the contingency, the future inability of the Purchaser to obtain a loan due to the lack of credit worthiness shall be considered a default hereunder. Purchaser acknowledges and represents that he has not relied upon the advice or representation, if any, of Seller or any salespersons representing Seller regarding the type of loan or the terms of any particular loan program to be obtained by Purchaser. Purchaser shall have the responsibility of independently investigating and choosing the lender, type of loan, and said loan program to be applied for by purchaser in connection with this transaction. Purchaser agrees to hold harmless Seller and any salespersons representing Seller, from any claims or loss whatsoever arising out of Purchaser's application and commitment for any loan, and with respect to the terms of instruments evidencing or securing said loan.

3. **Earnest Money:** Purchaser has paid to the Escrow Agent identified below \$ 15,000, as earnest money, which earnest money is to be applied as part payment of the purchase price at time of closing. Escrow Agent shall deposit the earnest money in the escrow account upon receipt. In the event the earnest money check is returned for insufficient funds or otherwise not honored, Seller shall in its discretion have the right to terminate this Agreement. The earnest money may only be disbursed: (a) at closing, (b) upon written agreement signed by all parties, (c) upon Court order, (d) upon breach by either party to the non-breaching party, (e) upon failure of any contingency herein, or (f) as otherwise set forth herein.

Escrow Agent: First American Title Company.

4. **Other Terms And/Or Conditions:** this Agreement is made subject to the following special terms, considerations and /or contingencies which must be satisfied prior to closing
5. **Items Included & Excluded In This Sale:** All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include all attached floor coverings, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, irrigation fixtures and equipment, all water systems, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the price and condition of the property are acceptable.

6.

**ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE:**

**A resident golf membership to the Headwaters Club will be included with this purchase.**

7. **Conveyance of Property:** Seller warrants that it currently has good and marketable, fee simple title to the property and shall convey the property by warranty deed to Purchaser at closing. Good and marketable title means insurable title at normal rates without exception except for permitted title exceptions and preprinted standard title exceptions. Conveyance shall be free of monetary liens or encumbrances, subject to preprinted standard title exceptions and the following permitted title exceptions, to-wit:

- (a) Property taxes for the year of sale;
- (b) Such state of facts as would be disclosed by an accurate survey and inspection of the premises;
- (c) The exact amount of acreage in the property;
- (d) All such other covenants, conditions, restrictions and easements of record as may now affect the Property;
- (e) All those matters shown on the plat of survey referred to above, as has been or may be amended;
- (f) That certain Master Declaration of Protective Covenants for Teton Springs Golf & Casting Club, dated August 15, 2001, as amended (the "Declaration");

- (g) Restrictions relating to building upon or using the Property by virtue of any building or zoning ordinance, restrictive covenants or other law of any entity of government or public authority; and
- (h) Any mortgage placed upon the Property by Purchaser in connection with the closing of the sale of the above-described Lot.
7. **Title Evidence:** A title insurance binder or policy, or title opinion, will be issued to Purchaser in connection with the transaction, at the expense of Seller, and will show that Seller, immediately prior to the conveyance of the Lot to Purchaser, is vested with title to the Lot, subject only to the title exceptions provided for in paragraph 6 of this contract which Purchaser, by execution hereof, specifically approves.
8. **Closing Date:** Closing shall take place on or before April 23, 04 Possession of the Property shall be granted no later than the Closing Date. SELLER may assess a 1% penalty on the total purchase price for each 15-day period that closing is delayed by no fault of SELLER.
9. **Closing Expenses:** The SELLER will pay for a title insurance standard coverage owners' policy, recording fees for the release of encumbrances, and preparation of the warranty deed. The BUYER will pay for any extended coverage on the title insurance policy, appraisal or any other fees and costs associated with BUYER's finance of the property, recording fees for the warranty deed and financing documents, if any. BUYER and SELLER agree to split equally the escrow agents' closing fees.
10. **Prorations:** General taxes for the year of closing based on the most recent calendar year assessment, irrigation assessments, prepaid rents, water rights, association fees, dues or assessments, utilities, insurance premiums and interest on encumbrances, if any and if applicable, will be prorated as of the Closing Date. If on the Closing Date the amount of such taxes, assessments and fees is not yet fully ascertained for the current year, the apportionment of taxes has been estimated on the basis of the best information available, and such estimate shall be conclusive between the parties.
11. **INSPECTION:**
- (A) BUYER chooses ☐ to have inspection ☐ not to have inspection. If BUYER chooses not to have inspection skip section 12. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYERS' expense. BUYER shall, within 10 business days of acceptance, complete these inspections and give to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER's own selection of professionals with appropriate qualifications to conduct inspections of the entire property.
- (B) FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection", HUD 92564-CN must be signed on or before execution of this agreement.

(C) SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

- i. If BUYER does not within the strict time period specified give to SELLER written notice of disapproved-of items, BUYER shall conclusively be deemed to have: a) completed all inspections, investigations, review of applicable documents and disclosures; b) elected to proceed with the transaction and c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.
- ii. If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 10 business days in which to respond in writing. The SELLER, at their option may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYER's inspection contingency.
- iii. If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair, correct or cancel the transaction. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

12. **Lead Paint Disclosure:** The subject property is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards.
13. **Square Footage Verification:** BUYER is aware that any reference to the square footage of the real property or improvements is approximate.
14. **Teton Spring's Covenants:** Teton Springs will not provide or complete roads, sewer, water, gas, electric, or telephone service, or recreational facilities except:
  - (a) The above-described property is or will be located on a paved road (for purposes of this Contract, "paved" means concrete or pavement with bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated), which has been or will be built to standards established by the state or the unit of local government in which the Community is located, and the Teton Springs Master Association is obligated to accept the road for maintenance;
  - (b) Water lines have been or will be extended to the above-described property and service is to be provided by Teton Springs Water and Sewer;



- (c) Sewer lines have been or will be extended to the above-described property and service is to be provided by Teton Springs Water and Sewer.
- (d) Electric service lines have been or will be extended to the above-described property and service is to be provided by Fall River Electric Company;
- (e) Telephone lines have been or will be extended to the above-described property and service is to be provided by Teton Telecom or a similar provider; and
- (f) Seller does not guarantee the construction of any proposed recreational facilities within or adjacent to the Teton Springs Community other than those recreational facilities as set forth in Exhibit "B" attached hereto.

Teton Springs represents that it has entered into a Development Agreement for Teton Springs Subdivision, Phase 1, with Teton County for the purpose of guaranteeing the full and satisfactory completion of the improvements identified within items (a) – (e) of this Section 14. In accordance therewith, the Teton Springs has also established an Irrevocable Letter of Credit to the benefit of the Teton County Commissioners in an effort to insure completion of the items set forth within this Section.

With respect to the above-referenced items (b) – (e), please note the following information with respect to rates and fees which are to be paid by the Purchaser:

- A. Fall River Electric Company will provide electric service at customary and usual rates and fees.
- B. Teton Telecom or a similar provider, will provide telephone service at customary and usual rates and fees.

- 15. **Completion of Facilities:** The only representations made by Teton Springs with respect to the completion of roads, sewer, water, gas, electric, telephone service and recreational facilities are as set forth in Section 9 and no other representations regarding the same have been made or relied upon by Purchaser. All completion dates for roads, sewer, electric and telephone service and recreational amenities as set forth herein are subject to delays and time extensions caused by acts of God, strikes, or manpower shortages, acts of governmental authorities, labor conditions beyond the control of Seller or any other cause beyond Seller's control or other grounds to establish impossibility of performance in the State of Idaho.
- 16. **Golf Lot Disclosure:** The Property is located or may be located adjacent to or in close proximity to a Golf Course and Club. Purchaser acknowledges that Purchaser has assessed the location of the Property in relation to the lay out and operation of the Golf Course and Club and acknowledges that owning the Property adjacent to or in close proximity to the Golf Course and Club involves certain risks which may have an impact and effect upon Purchaser's enjoyment of the Property. Purchaser acknowledges that such risks may include, by way of example and not as a limitation, noise associated with the playing of golf and with using the Golf Course and Club facilities; golf balls being hit into Purchaser's Property, with the potential

of causing bodily injury or physical damage to any improvements or personality; and golfers entering Purchaser's Property to retrieve errant golf balls. Purchaser assumes all such risks and agrees that neither Seller, Teton Springs, the Association, nor any other entity owning or managing the Golf Course or Club, or any portion thereof, shall be liable to Purchaser or to any person claiming any loss or damage, including, without limitation, actual, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof. Purchaser hereby agrees to indemnify and to hold harmless Seller, Teton Springs, the Association, or any other entity owning or managing the Golf Course or Club, against any and all claims by Purchaser's guests, invitees, or licensees, of any nature whatsoever, based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof, including, without limitation, all costs of litigation and attorneys fees incurred by Seller, Teton Springs, the Association, or any other entity owning or managing the Golf Course or Club, or any portion thereof. Nothing contained in this paragraph 16 shall restrict or limit any power of the Seller, Teton Springs, the Association or any other entity owning or managing the Golf Course or Club, or any portion thereof, to change the design of the Golf Course or Club, or of any other portion of the Golf Course or Club and related facilities, and any such change shall not be deemed or considered to have nullified, amended, altered, restricted, or impaired the covenants, obligations, and duties of Purchaser contained herein.

17. **Purchaser's Acknowledgements Regarding Teton Springs Golf Club:**  
(NOTICE: FAILURE TO COMPLY WITH THIS PART COULD PREJUDICE YOUR ABILITY TO OBTAIN A MEMBERSHIP IN THE TETON SPRINGS GOLF CLUB.)

WZ  
**Purchaser's Initials**

- (a) Purchaser explicitly acknowledges that **PURCHASER HAS FROM THE DATE HEREOF UNTIL THE LATER OF SIXTY (60) DAYS FROM THE DATE OF CLOSING HEREIN OR FROM COMPLETION OF THE GOLF COURSE TO OBTAIN APPROVAL AND ACQUIRE MEMBERSHIP IN THE TETON SPRINGS GOLF CLUB.** Memberships, which are not acquired by Purchaser by said date, may be offered on a first come, first served basis to other owners and non-owners. Accordingly, owners who do not acquire a membership as of said date may acquire a membership at a later date **only if one is then available** and only upon payment of the initiation deposit, which is **then** charged for membership. **NOTICE: FAILURE TO ACQUIRE A MEMBERSHIP AT CLOSING MAY PROHIBIT THE PURCHASER FROM HAVING A MEMBERSHIP AVAILABLE.** Subsequent purchasers of Lots in the Teton Springs Community from members are guaranteed the availability of a membership if the selling

member resigns his or her membership and arranges for the subsequent purchaser to acquire such membership. If a membership is not available, the Club of those persons who desire membership in the Club will establish a waiting list. Priority for available memberships will be given to property owners in the Teton Springs Community on the waiting list. The Club may, in its sole and absolute discretion, reserve memberships for sale to future purchasers of property in the Teton Springs Community. Memberships, which are reserved by the Club, will not be considered to be available memberships, and the Club may not be compelled to sell them.

- (b) The persons interested in acquiring a membership in the Club should **IMMEDIATELY UPON THE SIGNING OF THIS CONTRACT** submit a fully executed, completed application for membership in the Club. If the Club accepts the applicant, the Club will send the applicant notice of his or her acceptance. In the event the Club does not act favorably upon a person's application, the Club will so notify the applicant. Within the sixty (60) day period set forth above, the applicant, if accepted in the Club, shall pay to the Club the required initiation deposit, dues and any other charges as may be requested as a part of the membership. Upon payment of all deposits and required charges, the Club will then forward to the applicant a membership card for the member and his or her family members who are entitled to use the Club facilities under the membership, together with any other information deemed pertinent by the Club.
- (c) Purchaser acknowledges that the Club reserves the right, but not the obligation, to convert the Club facilities to an equity membership form of ownership. Initiation deposit members who acquire an equity membership will be entitled to a credit toward the membership contribution required for equity membership in the amount of the initiation deposit, which they previously paid.
18. **Purchaser's Covenants:** The Purchaser covenants and acknowledges that: (a) Purchaser has received copies of the Declaration and agrees to be bound by the terms and conditions of such document; (b) Purchaser or his or her spouse has made a personal, on-the-property inspection of the above-described property prior to the signing of this Contract; (c) Purchaser has received no offer of gifts, trips, dinners, or other such promotional techniques to induce him/her to visit the Teton Springs Community or to execute this Contract, either by direct mail or telephone; (d) BUYER acknowledges receipt of a good-faith written estimate of the cost of maintaining the roads over the first ten (10) years of ownership, which estimate is attached as Exhibit "A" hereto and incorporated herein by this reference; and (e) Purchaser has received a good-faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.
19. **The Teton Springs Master Association, Inc.:** There has been or will be created the Teton Springs Master Association, Inc. Purchaser shall be a member of the Association and Purchaser's Property shall be subject to assessment by the Association, which assessment is for the purposes set forth in the Declaration.

interest hereunder without Seller's written consent having first been obtained, Seller may, at its option, treat such event as a default by Purchaser hereunder, and shall not be obligated to recognize the Assignee or the Transferee.

26. **Survival of Closing:** The terms and conditions of this Contract shall survive the Closing and delivery of the warranty deed. Purchaser, on behalf of himself and his successors in title, agrees that in the event of any litigation to enforce this Contract, or in the event Seller is voluntarily or involuntarily made a part to any litigation concerning this Contract, Purchaser shall protect and hold the Seller harmless from any and all costs in connection with such litigation, including reasonably attorney's fees and court costs incurred by the Seller.
27. **Notices:** Notices hereunder shall be in writing and shall be delivered by hand, courier or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party as first set forth above. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or courier delivery or on the date received.
28. **Idaho Law:** This Contract and all relationships between the parties hereto shall be construed, interpreted and enforced in accordance with the laws of the State of Idaho.
29. **Time of Essence:** Time is of the essence in this Contract, except as otherwise specifically provided.
30. **Severability:** The provisions of this Contract are intended to be independent. In the event that any provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Contract.
31. **Full Knowledge:** Purchaser and Seller acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions and the effect of all the provisions of this Contract and every part of the Declaration, the exhibits thereto, the amendments thereto, the By-Laws, the Supplemental Declaration, the Articles of Incorporation of the Association and all parts of the Purchaser's Package.
32. **Real Estate Brokerage Commission:** Seller shall be responsible for all real estate commissions in connection with the transaction described herein to the Broker and to any other agents, or co-brokers only if they are listed below. In no event shall Seller have any obligation to pay any real estate commission except in the event of the consummation of the closing of this transaction pursuant to the terms of this Contract. Neither Seller nor Broker has acted as agent in this transaction for the Purchaser. The co-broker listed below, if any, shall receive a total commission at Closing of W/A % of the Purchase Price. Purchaser acknowledges that Purchaser has not contracted, negotiated, or otherwise dealt with any real estate broker not specifically identified in this Contract in connection with any aspect of this transaction. Purchaser agrees to indemnify and to hold Seller harmless from any claim made by any real estate broker or any other person asserting any claim for any commission, fee, salary, or other payment for any services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction, except for any claim for such services rendered to, for, or on behalf

of Purchaser in connection with any aspect of this transaction by any person specifically identified herein as a real estate broker.

33. **Disclaimer:** Seller and Purchaser acknowledge that they have not relied upon the advice or representation, if any, of Broker (or Broker's associated salespersons) relative to any consequences of this Contract and the sale of the Property, the purchase and ownership of the Property, the condition of the Property, the availability of utilities to the Property, or the investment potential or resale value of the Property. Seller and Purchaser both acknowledge that if such matters are of concern to them, they have sought and obtained independent advice. Purchaser acknowledges that Broker (or Broker's associated salespersons) are representatives of the Seller and are not acting by or for Purchaser in any capacity.
34. **Revocation:** This Contract may be revoked at the option of Purchaser until midnight of the seventh (7<sup>th</sup>) day following the signing of this Contract. This provision is non-waivable.
35. **Definitions:** The words used in this Contract shall have the same meaning as set forth in the Declaration and any amendment applicable thereto, as recorded or to be recorded in the land records of Teton County, Idaho, which, by this reference, are incorporated herein.

**Special Stipulations:**

**Buyer will have a 10 day due diligence period. This contract may be revoked at the option of the Purchaser during this time.**

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals and executed this contract in duplicate on the dates set forth by the signature (the contract date being the date that the last party signs this agreement).

Print Purchaser's Name:

William W.S. Chipman

(SEAL)

(SEAL)

PURCHASER:

William W.S. Chipman

Print Purchaser's Address and Phone Numbers:

3519 N. Dinwiddie St.

Address Arlington, VA 22207

Address (703) 538-1850

Home Phone

(703) 848-3060

Business Phone

Facsimile

Print Purchaser's County of Residence:

Signed as to Purchaser this 6  
day of March, 2004.

Seller's Address:

2860 N. Prestwick Way Lacanto, FL 834461

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

SELLER:

Winston  
V + K. Westmont

By: \_\_\_\_\_

X  
Warranty Deed should be prepared as:

\_\_\_\_\_ joint tenants with rights  
\_\_\_\_\_ of survivorship  
\_\_\_\_\_ tenants in common only

\_\_\_\_\_ corporate / partnership

\_\_\_\_\_ husband/ wife

ACCEPTED BY SELLER this \_\_\_\_\_  
day of \_\_\_\_\_, 200 \_\_\_\_

The Escrow Agent is: **First American Title**  
whose address is: **81 North Main St Driggs, ID 83422**

CO BROKER:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Business Phone

\_\_\_\_\_  
Facsimile

By: \_\_\_\_\_  
Authorized Agent

BROKER:

Tom Clinton  
Print Name

One Teton Springs Parkway  
Address

Victor, ID 83455  
Address

\_\_\_\_\_  
Business Phone

\_\_\_\_\_  
Facsimile

By: \_\_\_\_\_  
Authorized Agent

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EXHIBIT "A"

TETON SPRINGS GOLF & CASTING CLUB

CONTRACT FOR SALE - ADDENDUM

RE: Paragraph 13(d), Good Faith Estimate, Road Maintenance

FROM: Teton Springs Golf & Casting Club, LLC  
d/b/a Teton Springs

To:  
(Purchaser)

RE:

The estimated cost of maintaining the roads within the Teton Springs Community over the first ten years of ownership is approximately \$300,000.00. Said expense is to be incurred by the Teton Springs Master Association, Inc. which will collect monies through the levy of assessments in accordance with the Declaration. Purchaser will only be responsible for their share of the expenses incurred. The developer will pay for the shares held by unsold platted lots.

SELLER: Teton Springs Golf & Casting Club, LLC d/b/a Teton Springs

By: Wm. S. Clyne  
Its Authorized Representative

PURCHASER:

Wm. S. Clyne  
\_\_\_\_\_



## EXHIBIT "B"

### TETON SPRINGS GOLF & CASTING CLUB

#### CONTRACT FOR SALE - ADDENDUM

RE: Paragraph 13(e), Good Faith Estimate, Completion of Improvements

FROM: Teton Springs Golf & Casting Club, LLC d/b/a Teton Springs

To:  
(Purchaser)

RE: Lot No.

<u>Facility Providing Maintenance</u>	<u>Party Responsible for</u>	<u>Estimated Year of Completion</u>
A - Roads	Currently Teton Springs Golf & Casting Club upon relinquishment of maintenance to owner's association, Teton Springs Master Association, Inc.	2003
B - Water	Teton Springs Water and Sewer	2002
C - Sewer	Teton Springs Water and Sewer	2002
D - Electricity	Fall River Electric Company	2002
E - Telephone	BridgeBand Communications	2002
F - Other Existing	Recreational Facilities or Proposed Amenities	
(i)	18 hole golf course, practice range, and practice facilities, putting greens and related cart paths/bridges and ancillary/ features (9 holes )	2003
(ii)	9 hole par three executive golf course and golf academy.	2004
(iii)	Spring Creek fishing habitat/pond areas - fishing habitat.	2004
(iv)	Nordic skiing facility (golf course/open space).	2004
(v)	Walking paths, bike paths, equestrian trails within the project.	2004
(vi)	Access to National Forest by existing public access points.	2004
(vii)	Western club facility.	2004
(viii)	Tennis facility/health club/swimming pool and ancillary support facilities.	2005

COPY

*Chipman*  
Addendum to Chimpan Contract

Seller agrees to lease back Warm Creek Cabin # 24 from time of closing @ \$3,600 per month for one years use exclusively as a model home. Seller agrees to lease back Warm Creek Cabin #24 as a model or rental for an additional year lease back of \$3,600 per month through February 2006. (Seller's choice on model use or rental in the second year). If Teton Springs puts unit in rental pool, furniture is Teton Springs responsibility.

Buyer will have the option to put Warm Creek Cabin #24 in 50/50 rental program for one year following the end of the lease back.

Buyer will be entitled to three complimentary weeks of stay at Teton Springs for two years (Holiday dates excluded) at an available Teton Springs rental unit.

*WT* *WT*

**TAB "13"**

1 A Yes.  
2 Q And one of your claims is for breach of  
3 contract; correct?  
4 A Yes.  
5 Q You believe you had a valid, enforceable  
6 contract with them?  
7 MR. OHMAN: Objection, leading.  
8 THE COURT: It is a leading question.  
9 Sustained.  
10 MR. WILLIAMS: Just background, Your Honor.  
11 Q (By Mr. Williams) You believe you suffered  
12 damages as a result of that breach?  
13 A I do.  
14 Q Okay. If Teton Springs would have gone through  
15 with that, would you be the owner of that home?  
16 A I would. We would.  
17 Q Teton Springs cancelled your contract on  
18 January 13th; correct?  
19 A That's correct.  
20 Q Do you have an opinion as to the value of the  
21 home as of January 13, 2003?  
22 A I do.  
23 Q What is your opinion?  
24 A \$875,000.  
25 Q Now I want to ask you about the basis for your

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1 opinion. In arriving at that did you consider various  
2 types of information and evidence?  
3 A I did.  
4 Q Did you look at appraisals?  
5 A Yes.  
6 Q Did you look at offers on the home?  
7 A Yes.  
8 Q Did you look at contracts to purchase that  
9 home?  
10 A I did.  
11 Q Now let's look at the appraisals. Were you  
12 aware of the Gettling appraisal in November?  
13 A I was.  
14 Q And that was November 26th, as I recall?  
15 A (No response.)  
16 Q November, 2003?  
17 A Yes, it was.  
18 Q And do you recall the amount of the Gettling  
19 appraisal?  
20 A I think it was \$650,000.  
21 Q And we've previously discussed that with  
22 Plaintiffs' Exhibit 35; correct?  
23 A Yes.  
24 Q All right. Now, do you think the Gettling  
25 appraisal reflects the value of the home as of

434

1 January 13, 2004?  
2 A No.  
3 Q And why not?  
4 A Well, the Gettling appraisal was made when the  
5 home -- it was low because the home wasn't finished  
6 when that appraisal took place, which was November  
7 26th of '03.  
8 Q Okay.  
9 A He said it wasn't furnished so he didn't  
10 appraise it as much, for as much.  
11 Q And did Teton Springs and Jim Gill discuss the  
12 Gettling appraisal? Do you recall that discussion?  
13 A Yes.  
14 Q And was it determined that you needed to get  
15 another appraisal done?  
16 A They wanted another appraisal.  
17 Q And you've seen Plaintiffs' Exhibit 40, the  
18 Debbie Phillips appraisal; have you not?  
19 A Yeah, I don't know which exhibit number, but  
20 I've seen it obviously.  
21 Q And that was December 11th; was it not?  
22 A December 11th, December 10th, yes.  
23 Q And what was the value of the home that Debbie  
24 Phillips came to in her appraisal?  
25 A \$732,000, you can correct me if I'm wrong on

435

1 that.  
2 Q Do you think this reflects the value of the  
3 home as of January 13 of 2004?  
4 A No, sir.  
5 Q And why not?  
6 A Well, in September of that year Jim Gill came  
7 to me and he said, Margo Beldon, she was the one who  
8 brokered for Teton Springs, and he said we have a  
9 buyer -- she has a buyer that would pay \$100,000 more  
10 than you're going to pay for your home, and our home  
11 price was \$653,000 and they wanted to pay \$100,000  
12 more. I thought it was worth more and this is our  
13 retirement.  
14 Q Now, Plaintiffs' -- could you look at Exhibit  
15 No. 39, please, Mr. Harger?  
16 A Yes. I agree with the Judge. We need to get  
17 rid of this binder.  
18 Q And is this appraisal performed by Debbie  
19 Phillips?  
20 A Yes.  
21 Q And this is of Lot 23, the Allen cabin right  
22 next to yours, is it not?  
23 A Yes; it is.  
24 MR. OHMAN: To which we object, Your Honor.  
25 Irrelevant, immaterial to the contract concerning our

436

1 discussions.  
2 THE COURT: I think the testimony's already in  
3 from Ms. Allen concerning the value.  
4 Q (By Mr. Williams) And what was the date of the  
5 appraisal?  
6 A December 6th of 2003.  
7 THE COURT: Okay. Go ahead, you can ask your  
8 next question.  
9 Q (By Mr. Williams) What's the value  
10 Mrs. Phillips came to there on Page 2?  
11 A \$730,000.  
12 Q Now, turning your attention, Mr. Harger, to  
13 contracts from appraisals. You've heard Mr. Reid  
14 testify in Court yesterday that he sold your home to  
15 himself through the vehicle of V and R Investments;  
16 had you not?  
17 A Yes.  
18 Q Okay. Now, you saw the contract for the sale  
19 to V and R Investments; did you not?  
20 A Yes, I have.  
21 Q And what was the price that Mr. Reid sold the  
22 home to himself for?  
23 A \$745,000.  
24 Q And do you believe \$745,000 reflects the fair  
25 market value of the home as of January 13th?

437

1 A No, sir.  
2 Q And why not?  
3 A That was kind of an inside deal. Mr. Reid sold  
4 the house to himself rather than going through  
5 somebody for permission, but basically it was just an  
6 inside deal. He's the one in charge of sales and he  
7 sold it to himself.  
8 Q Okay. I asked you about the Allen appraisal of  
9 their home. Is it your opinion the Allens' home was  
10 comparable in value to yours?  
11 A Yes, sir, basically within \$2,000.  
12 Q You heard Mr. Reid testify that after V and R  
13 Investments purchased the home that they turned around  
14 on March 6, 2004 and sold it to the Chipmans, you  
15 heard that testimony?  
16 A Yes.  
17 Q Did you see the sale contract that was between  
18 V and R Investments and the Chipmans?  
19 A Yes.  
20 Q And did you see the price that Mr. Reid sold  
21 your home to the Chipmans for?  
22 A Yes.  
23 Q And what was the amount that Mr. Reid sold your  
24 home to the Chipmans for?  
25 A \$875,000.

438

1 Q Do you believe this accurately reflects the  
2 fair market value of the home as of January 13, 2004?  
3 A I do.  
4 Q And why do you believe that?  
5 A Well, this was what they call an arm's length  
6 transaction. It was sold to a buyer on the outside no  
7 connection to the company, so this really reflects the  
8 market value of the home.  
9 Q Now, in addition to the fair market value of  
10 the home on the 13th, you've also brought a claim  
11 against the Defendants for wrongfully or tortuously  
12 interfering with your contract; have you not?  
13 A That's correct.  
14 Q Did you suffer damages as a result of that?  
15 A Yes.  
16 MR. OHMAN: Objection, insufficient foundation.  
17 No evidence as to tortuous interference.  
18 THE COURT: He may answer.  
19 MR. WILLIAMS: I think he did.  
20 Q (By Mr. Williams) Has your home appreciated in  
21 value since January 13th?  
22 MR. OHMAN: Objection. Insufficient  
23 foundation.  
24 THE COURT: When you say his home appreciated,  
25 which home are you talking about?

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1 Q (By Mr. Williams) Has the home you were  
2 purchasing, Lot 24, appreciated in value since  
3 January 13, 2004?  
4 THE COURT: The objection was?  
5 MR. OHMAN: Insufficient foundation.  
6 THE COURT: Sustained.  
7 Q (By Mr. Williams) Have you reviewed evidence  
8 of the current value of the home?  
9 A Yes, I have.  
10 Q Have you looked at appraisals?  
11 A Yes.  
12 Q Have you looked at the assessed value?  
13 A Yes.  
14 Q Have you looked at advertisements in the  
15 Jackson Hole News?  
16 A Yes.  
17 Q Okay. Now, do you know what the current  
18 appraised value of your home is?  
19 MR. OHMAN: The home in which he resides?  
20 THE WITNESS: Yes.  
21 MR. WILLIAMS: I'm sorry. Go ahead.  
22 MR. OHMAN: Ambiguous. We don't know the home  
23 to which Counsel's referring.  
24 THE COURT: The question's ambiguous as asked.  
25 MR. WILLIAMS: Fair enough.

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1 Q (By Mr. Williams) Do you have a current  
2 appraisal for Lot 24? Have you seen one?  
3 A Lot 24 is the home which we had a contract for.  
4 Yes, I do.  
5 Q No, do you have a current appraisal for the  
6 Lot 24?  
7 A Oh, current appraisal for mine?  
8 Q Lot 24, your home?  
9 A For Lot 24?  
10 Q Yes.  
11 A No.  
12 Q Okay. Do you have a current appraisal for  
13 Lot 23?  
14 A Yes.  
15 Q And who was that appraisal performed by?  
16 MR. OHMAN: Objection. Irrelevant.  
17 THE COURT: Sustained.  
18 MR. WILLIAMS: Your Honor, we've already agreed  
19 to the admission of evidence of the appraisal. It's  
20 stipulated to.  
21 MR. OHMAN: The appraisals of the subject  
22 property, not appraisals to other person's properties.  
23 MR. WILLIAMS: No --  
24 THE COURT: Okay. Hold on. Just a second.  
25 This is Lot 23. This isn't the one that was subject

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1 to purchase. Based on the record we have now, I'll  
2 sustain the objection on the appraisal on that lot as  
3 of this date.  
4 MR. WILLIAMS: May we approach the bench?  
5 THE COURT: Yeah, but we'll need to put it on  
6 the record.  
7 MR. WILLIAMS: That's fine.  
8 THE COURT: Ladies and gentlemen, we're going  
9 to take another recess. We'll be about five-ten  
10 minutes.  
11 (Recess)  
12 (The following was held outside the  
13 presence of the jury.)  
14 THE COURT: On the record again. We have an  
15 issue on the appraisal. Go ahead, Mr. Williams.  
16 MR. WILLIAMS: Yes, Your Honor. A week before  
17 the pretrial conference the Court asked us to  
18 stipulate to which exhibits we were going to stipulate  
19 to. I wrote to Mr. Ohman, talked to him, talked to  
20 Sean, we agreed to stipulate to the appraisals. I  
21 have called Debbie Phillips and asked her to come as a  
22 witness, subpoenaed her to lay the foundation for this  
23 appraisal. After I got the stipulation that the  
24 appraisals could come in, I released Ms. Phillips from  
25 that based upon the agreement which is in writing,

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1 Your Honor.  
2 Now, that agreement is relevant because we've  
3 already established that it is comparable to the  
4 Harger home, it's right next to it, the prices were  
5 the same, the appraisals were the same all along. It  
6 is an appraisal of the Allen home, the only current  
7 appraisal there is. It's totally relevant, Your  
8 Honor, and that's the only way we can get that in and  
9 they've already stipulated to it and that's why we  
10 didn't call Debbie Phillips and it's disingenuous for  
11 them to say now that the appraisals are not coming in  
12 and there's no way I can get Debbie Phillips here now,  
13 I've already released her and it clearly is relevant  
14 because it's comparable.  
15 THE COURT: Not everybody has to stand up. You  
16 can sit down.  
17 MR. WILLIAMS: Thank you, Your Honor.  
18 THE COURT: Go ahead, Mr. Ohman.  
19 MR. OHMAN: May it please the Court. Counsel  
20 correctly informs His Honor and His Honor participated  
21 at the time we stipulated the appraisals. It was done  
22 in your chambers at the pretrial conference, but it  
23 wasn't appraisals of nonrelevant and immaterial  
24 parcels, it was as to the subject parcel and any  
25 appraisals that they have are acceptable to us, that's

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1 what we intended, that's what we told the Court,  
2 that's what we confirmed in writing. We do not want  
3 to open the door now to have them suggest that any  
4 appraisals on any property in any location may now  
5 come into evidence. We'd suggest that it's under an  
6 agreement by Counsel. Subject and relevant appraisals  
7 we stipulated to we still agree.  
8 As to Debbie Phillips and as to whether or not  
9 they want her here, we have no objection to her being  
10 here. We'd renew the same objection if she were here.  
11 We do not mean to prejudice her, we do not want -- we  
12 do not require that she's here on the appraisal and  
13 that's why we stipulated, for example, to Exhibit No.  
14 40, that is Debbie Phillips' appraisal on the subject  
15 property as of December 11, 2003.  
16 MR. WILLIAMS: One more quick comment. Two  
17 things, Your Honor: After Mr. Ohman wrote his  
18 proposal to me, I wrote back to him on March 31st on  
19 exhibits. We did agree all appraisals come into  
20 evidence. You already have copies of the Burt  
21 Gettling and the first Phillips appraisals and I will  
22 provide you with an additional copy of the most recent  
23 appraisal prepared by Debbie Phillips and utilized by  
24 Bruce Denny on his damage report, which we discussed  
25 at mediation they had and they know about it. I

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1 believe a copy was provided to Mr. Moulton prior to  
2 mediation and Ms. Allen is bringing her copy tomorrow.  
3 I'll provide you a copy Monday. Then we signed our  
4 stipulation.

5 We already have before the jury the Debbie  
6 Phillips appraisal of the Allens' home. We've already  
7 established it is comparable. That kind of evidence  
8 is admissible, Your Honor. We're not talking about  
9 some home in some -- we're talking about the exact  
10 same lot. It's completely relevant and now we can't  
11 get Debbie Phillips. I released her from her  
12 Subpoena. Her attorney, Steve Wetzel, said if you  
13 want her there, you pay her expert fees. After  
14 Mr. Ohman agreed, I released her. We can't do it now.

15 MR. OHMAN: We're not insisting that she be  
16 here, that isn't the issue. Her presence isn't what  
17 we're objecting to or her absence. It's irrelevant  
18 and immaterial --

19 MR. WILLIAMS: They've already agreed to it,  
20 Your Honor.

21 MR. OHMAN: And we've been hoodwinked.

22 THE COURT: What's the current appraisal on it?

23 MR. WILLIAMS: \$1,028,000.

24 MR. OHMAN: And we do acknowledge it was given  
25 to us yesterday. They gave it to us yesterday.

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1 MR. WILLIAMS: Along with Mr. Denny's report of  
2 the mediation, that's the basis for his damage report.

3 MR. MOULTON: All I received at the mediation  
4 was just Mr. Denny's report. This is the first we've  
5 seen of the appraisal.

6 MR. WILLIAMS: Which is based on the Phillips  
7 appraisal.

8 MR. OHMAN: Here it is. It was given to me  
9 yesterday.

10 MR. WILLIAMS: Yes, and it was given -- the  
11 full report and the Phillips appraisal was discussed  
12 eight hours, the mediation, they've known about this  
13 for months.

14 MR. MOULTON: Mr. Denny's report was there.  
15 The appraisal wasn't included with the report. I  
16 don't know what he relied on because Counsel never  
17 provided that as part of Mr. Denny's report. The  
18 Court's aware that the experts have been kept out.

19 MR. WILLIAMS: Annis brought it here Saturday  
20 for me. They had known about it and they agreed to it  
21 and my letter confirmed our agreement and I can't  
22 believe they're trying to get out of this agreement  
23 right now.

24 Part of the problem is you've got two  
25 attorneys, Your Honor, and one's been involved and one

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1 hasn't, but I've been writing to them both.

2 THE COURT: Well, let me say at this point --

3 MR. WILLIAMS: It's relevant.

4 THE COURT: -- It may be relevant. You've  
5 given me a problem I just can't resolve on the spur of  
6 the moment. Part of it goes back to whether there was  
7 an agreement or whether there wasn't an agreement,  
8 attorneys say no, say yes. I don't know. What I'm  
9 going to say is at this point I'm not going to make a  
10 ruling on that. We'll reserve our -- let me get a  
11 chance to think about it a little bit. In the  
12 meantime, let's proceed with any other questions you  
13 can ask and let's keep our jury engaged here until  
14 lunch.

15 MR. OHMAN: Okay. With one exception --

16 MR. WILLIAMS: I only have about two more --  
17 well, two more lines on the value of the home and then  
18 the miscellaneous damages, so it's about a half hour.

19 THE COURT: Okay. Mr. Ohman, anything else?

20 MR. OHMAN: Just to confirm, we're not saying  
21 there was no agreement, we're saying the agreement was  
22 as to the relevant appraisals.

23 THE COURT: Okay. Let's invite our jury to  
24 come in again. Now, is there anything else we're  
25 going to run into so we don't have to send them out

447

1 again before noon?

2 MR. WILLIAMS: We're playing it by ear, I don't  
3 know.

4 THE COURT: Okay.

5 (The following was held in open Court.)

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448

1 THE COURT: We're back again. Mr. Harger's on  
2 the stand. Ladies and gentlemen, we don't want  
3 anybody to get blood clot in your legs so we're giving  
4 you some exercise regularly here, but this is all to  
5 assist in the process of getting the information you  
6 need to hear to make the decision.  
7 Go ahead, Mr. Williams.  
8 MR. WILLIAMS: Thank you, Your Honor.  
9  
10 DIRECT EXAMINATION (Cont.)  
11 BY MR. WILLIAMS:  
12 Q Mr. Harger, let's move now from the appraisals  
13 and go to the assessors. Do you have knowledge as to  
14 the current assessed value of Lot 24?  
15 A Yes, I do.  
16 Q What is that amount?  
17 A \$948,195.  
18 Q Is that a current assessment?  
19 A Yes.  
20 Q And do you believe that accurately reflects the  
21 current fair market value of the home?  
22 A No. As a homeowner, and I think most  
23 homeowners know, that the assessed values are never  
24 the same. They're always lower than the market value.  
25 That just seems to be the way it works.

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1 Q Are you familiar with current advertisements  
2 regarding homes for sale in Teton Springs?  
3 A Yes, they've got advertisements, full page  
4 ones, in our daily newspapers every week.  
5 Q Okay. And what are the advertised prices  
6 you've seen?  
7 MR. OHMAN: Objection, irrelevant. In the  
8 absence of further foundation, insufficient  
9 foundation.  
10 THE COURT: We need some further foundation to  
11 make sure we're not talking about apples and oranges  
12 here.  
13 MR. WILLIAMS: Okay.  
14 Q (By Mr. Williams) Are you referring to the  
15 *Jackson Hole Daily News*?  
16 A That's one of them, yes.  
17 MR. WILLIAMS: Your Honor, may we have the  
18 Bailiff hand this to Mr. Harger?  
19 THE COURT: Certainly.  
20 Q (By Mr. Williams) Just identify that document  
21 and tell the jury the date of that on the front  
22 page -- the front page of the paper.  
23 A It's Monday, March 27, 2006.  
24 Q And what does that indicate there you're  
25 looking at?

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1 A Well, it's best of all worlds, Teton Springs  
2 Realty and it lists one, two, three --  
3 MR. OHMAN: Objection. Volunteered testimony.  
4 It goes beyond the scope of the question.  
5 THE WITNESS: I thought you wanted --  
6 THE COURT: Okay. Hold on just a second.  
7 There's a certain process we have go to follow. Go  
8 ahead and ask your next question.  
9 Q (By Mr. Williams) Does it contain some  
10 advertisements for some homes in Teton Springs?  
11 A Yes, it does.  
12 Q Tell us what those advertisements are.  
13 MR. OHMAN: Objection, Your Honor.  
14 Insufficient foundation, irrelevant and immaterial.  
15 They're not comparable or examples. Is he comparing a  
16 \$5,000 home that's being advertised to that that he  
17 thought he might acquire some day but failed to  
18 acquire at 2200 square feet?  
19 THE COURT: I understand the objection. He may  
20 answer the question.  
21 Q (By Mr. Williams) And go ahead and respond to  
22 that question fully, identify the homes and tell the  
23 jury whether you think they are comparable and what  
24 the prices are being sold for.  
25 A Well, there's one home for \$1,500,000 and it's

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1 four thousand -- looks like 4,926 square feet or  
2 something. That's not comparable, it's much larger.  
3 Another one for \$1,200,000, I'm trying to find the  
4 square footage on that one. If you would hand me your  
5 glasses, Fran. Like I said, I've gotten away with out  
6 these for 21 years, but the light's not good here,  
7 this is small print. Okay.  
8 THE COURT: Mr. Harger, it would be helpful if  
9 you'd find the square footage that's comparable with  
10 your home.  
11 THE WITNESS: Okay. Yes, sir. Yes, sir.  
12 Here's one that's \$1,200,000, it doesn't give the  
13 square footage. \$1,295,000, it's a 3,000 square foot.  
14 Q (By Mr. Williams) And what was the square  
15 footage on your home?  
16 A I think it was almost 23, I believe.  
17 Q So this one is larger than yours?  
18 A Yes, sir.  
19 Q Now, did they take into account any information  
20 about the lots?  
21 A No, and can I say something?  
22 Q Yes. Did your lot --  
23 A Let me see here. Well, it's not in the same  
24 area, but our lot is probably the best ones in the  
25 subdivision.

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1 Q So you admit these are not exact comparisons;  
2 correct?  
3 A No, not too many that would be. There's  
4 another one at \$1,250,000. Again, no square footage.  
5 Q Okay. Now let's move on now. In addition to  
6 the appraised value of the home, did you suffer -- or  
7 the loss of the fair market value of the home, did you  
8 suffer additional damages?  
9 A Yes, I did.  
10 Q Okay. The April 19th letter referred to a  
11 rebate. Do you recall that exhibit?  
12 A I do.  
13 Q What was the amount of that damage?  
14 A The rebate was 10 percent of the purchase price  
15 of the lot, or \$21,000, which they were going to give  
16 us back when we purchased, so we lost \$21,000.  
17 Q In addition, was there a part of your agreement  
18 for three weeks of rental?  
19 A Yes, it was.  
20 Q That was part of the Lot Sale Agreement, one of  
21 the attachments?  
22 A Yes, April 25th.  
23 Q Did you assign a value to that item?  
24 A Yes, I did.  
25 Q What is the amount?

453

1 A Want me to go ahead --  
2 Q Well, first describe, just so it's clear to the  
3 jury, what the agreement was for.  
4 A Okay. During the term of the lease back  
5 agreement, you will have personal use of one of our  
6 rental properties for up to three weeks a year.  
7 Q Okay. And then did you assign a value to that?  
8 A I did.  
9 Q And what is that?  
10 A \$46,621.  
11 Q How did you arrive at that figure?  
12 A I went on the Web site and picked up the rental  
13 that they charge people. It seems quite a bit, but on  
14 their Web site I printed out the rental of a home of  
15 that size. They had three size categories and I took  
16 the one our size cabin was. And they had high season,  
17 low season and holiday season and they had different  
18 rates for each season. The high season was \$725 a  
19 night for the cabin. The low season was \$615,000 a  
20 night for the --  
21 Q \$615?  
22 A Huh?  
23 Q \$615?  
24 A Yeah, what did I say?  
25 Q Thousand.

454

1 A Okay. \$615 a night, and then the holiday  
2 season was \$880 a night.  
3 Q Go ahead then and describe?  
4 A Well, they've got three different rates and  
5 I've got 21 days a year to use that or have me or  
6 someone else, so I took the high season, \$725 a night,  
7 and I multiplied that by seven days, we got 21 days.  
8 I took the low season at \$650 and I multiplied that  
9 times seven days, then I took the holiday season at  
10 \$880 a night for the cabin and I multiplied that times  
11 seven days.  
12 Q And what did that ultimately come up to?  
13 A For a year it came up to \$15,540, then I  
14 multiplied that times the three years that they were  
15 giving it to us, and that became \$46,620, I think I  
16 said 21, it's 20. \$46,620.  
17 Q Okay. Now, did you also -- were you promised a  
18 discount on the golf membership as part of your  
19 incentives?  
20 A We were.  
21 Q What was the amount -- or value of the golf  
22 membership?  
23 MR. OHMAN: Asked and answered, Your Honor.  
24 That was gone into the first time that they called  
25 this witness to testify.

455

1 THE COURT: Sustained. It was discussed as  
2 part of the contract.  
3 Q (By Mr. Williams) Did you calculate a damage  
4 for the lost golf membership?  
5 A I did.  
6 Q What was that amount?  
7 A \$14,000.  
8 Q Okay. And your Model Cabin Sale Agreement, you  
9 recall there was the 1031 exchange?  
10 A Yes.  
11 Q Did you sustain a penalty for Teton Springs  
12 breach of the agreement --  
13 MR. OHMAN: Objection. The characterization or  
14 mischaracterization as the case may be.  
15 THE COURT: As to the use of the word  
16 "penalty"?  
17 MR. OHMAN: No, breach.  
18 THE COURT: Breach?  
19 MR. OHMAN: They've not proven any breach of  
20 any agreements and --  
21 THE COURT: I understand the objection. The  
22 allegation is there is a breach. The question was  
23 asked on that allegation. He may answer.  
24 THE WITNESS: Because -- can I explain to the  
25 jury what that is?

456

1 Q (By Mr. Williams) Yes, please.  
 2 A When we sold our -- to get the down payment for  
 3 the lot we sold a piece of property with a  
 4 condominium, rental condominium that I bought when I  
 5 sold my business. I had to sell that. And the tax  
 6 code says that if you buy something of equal value or  
 7 greater value you don't pay taxes on the gain. In  
 8 other words, you can buy that and then you don't have  
 9 to pay a tax on your income tax. That was listed on  
 10 Paragraph 5 of the August 30, 2003, agreement to buy  
 11 the cabin and it's noted that this was subject to me  
 12 to a tax free exchange.  
 13 When they cancelled the contract I had to pay  
 14 taxes on that and the CPA concluded that we paid  
 15 \$22,030 in income taxes more than we would had we not  
 16 had this gone through and we had not paid those taxes.  
 17 Q Okay. Did that conclude the damages?  
 18 A Yes.  
 19 MR. WILLIAMS: Okay. I have no further  
 20 questions at this time subject to the Court's ruling  
 21 on the current appraisal.  
 22 THE COURT: Thank you. Mr. Ohman?  
 23 MR. OHMAN: Thank you, Your Honor.  
 24  
 25

457

1 CROSS EXAMINATION  
 2 BY MR. OHMAN:  
 3 Q Thank you, Mr. Harger. You were asked a  
 4 question and it was prefaced by saying when Mr. Reid  
 5 sold the Lot 24 cabin to himself. Do you remember  
 6 Counsel raising this question in that context?  
 7 A I may have, yes.  
 8 Q Mr. Reid never owned Lot 24; did he?  
 9 A Mr. Reid was a partner in V and R Investments  
 10 and they owned the home -- the lot. Is that what  
 11 you're trying to say?  
 12 Q No, I'm not trying to say anything. I'm trying  
 13 to ask you --  
 14 A Oh, I didn't understand your question.  
 15 Q -- you said something about Mr. Reid selling  
 16 Lot 24 to himself. He would have to own it before he  
 17 could sell it to himself, would you agree with that?  
 18 A Yes.  
 19 Q And he never owned it; did he?  
 20 A No, it was Teton Springs that owned it and he  
 21 purchased it from Teton Springs.  
 22 Q Thank you, sir. You've given us a lot of  
 23 numbers, kind of food for thought, so to speak.  
 24 A Yes.  
 25 Q You never did acquire ownership of the

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1 property; did you?  
 2 A No.  
 3 Q Do you have some non buyers remorse here that  
 4 wished that you would have gone through with the deal  
 5 now?  
 6 A Oh, absolutely. I would have gone through with  
 7 the deal in any way, shape or form and always intended  
 8 to do it and always expressed that.  
 9 Q But yesterday you told us under oath there  
 10 never was an agreement that was reached. That's true;  
 11 isn't it?  
 12 A No, that's not true --  
 13 MR. WILLIAMS: Objection. Misstates the  
 14 previous --  
 15 THE COURT: Hold on.  
 16 MR. WILLIAMS: Misstates the testimony.  
 17 THE COURT: The jury's heard the testimony.  
 18 The question can be asked and he can answer.  
 19 THE WITNESS: We had two agreements. We had an  
 20 agreement on April 19th for the lot that was very  
 21 valid, and if that wasn't valid then you've got  
 22 hundreds of people paying hundreds of thousand dollars  
 23 for lots that aren't good. That contract was very  
 24 good and it still exists. We also had an agreement --  
 25 MR. OHMAN: Maybe have him finish, Your Honor.

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1 There's not even a question.  
 2 THE WITNESS: -- on August 30th -- oh, I  
 3 thought you were asking me -- you said I didn't have  
 4 an agreement --  
 5 THE COURT: Hold on just a second.  
 6 THE WITNESS: -- I'm saying I did have an  
 7 agreement.  
 8 THE COURT: Okay. Hold on.  
 9 THE WITNESS: I'm sorry.  
 10 THE COURT: When we get an objection, we had a  
 11 little bit of interplay going on. Go ahead with  
 12 another question, Mr. Ohman, and then you can respond.  
 13 Q (By Mr. Ohman) When you talked about the  
 14 rental that you lost, it would only be a loss to you  
 15 if you owned the property; correct?  
 16 A Say that again.  
 17 Q Yes. Only someone who owns the property is  
 18 allowed to participate in the rental program; right?  
 19 A That's true.  
 20 Q Only someone who owns the property has the  
 21 right to participate in the lease-back provision;  
 22 correct?  
 23 A Yes.  
 24 Q Only someone who owns the property gets the  
 25 benefit of the appreciation and its values; isn't that

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1 true?

2 A That's correct.

3 Q And when someone has an opportunity for a 1031

4 exchange and there's a tax that is -- a capital tax

5 that is postponed, it's ultimately paid later anyway;

6 isn't it? Isn't it a postponement or a deferral of

7 the tax?

8 A Technically, but at my age that probably

9 wouldn't happen. I would have never paid that tax.

10 Q In any event, many of these property values

11 that you wanted to read from the newspaper and you

12 talked about as comparables, you don't really know the

13 sizes of them in compared to Lot 24 that was not

14 closed by you?

15 A I read some of them. They were listed, yes.

16 MR. QHMAN: That's all of the questions I have

17 presently. Thank you, sir.

18 THE COURT: Thank you. You may step -- unless

19 you have some questions, Mr. Williams?

20 MR. WILLIAMS: No, none, Your Honor.

21 THE COURT: You may step down. You may call

22 your next witness.

23 MR. WILLIAMS: Ms. Nead could only be available

24 at 1:30, so if we could take our lunch break now, I

25 think she'll be our final witness with the exception

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1 of a few pages of Jim Eden's deposition that probably

2 won't take ten minutes. We've just got to make sure

3 we find the correct pages.

4 THE COURT: All right. Let's take the noon

5 recess at this time, ladies and gentlemen, until 1:30.

6 We'll commence at that time. Please don't discuss the

7 case until it's submitted. Thank you.

8 (Noon recess)

9 THE COURT: Back on the record following the

10 noon recess. All of our jurors are present in the

11 case of Harger versus Allen [sic]. Attorneys and

12 clients are present.

13 Mr. Williams, you may call your next witness.

14 MR. WILLIAMS: Thank you, Your Honor. We'd

15 call Jessica Nead.

16 THE COURT: Ms. Nead, is it? Nead?

17 MR. WILLIAMS: Yes.

18 THE COURT: If you'll please come forward,

19 Ms. Nead. Just come right on through here, if you

20 will. Just before you sit down I'll have you stop for

21 a second, face our Clerk and raise your right hand.

22

23

24

25

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1 JESSICA MARIE NEAD,

2 called as a witness by and on behalf of the

3 Plaintiffs, after having been duly sworn, took the

4 stand and testified as follows:

5

6 THE COURT: Please come and be seated.

7

8 DIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q Good afternoon.

11 A Good afternoon.

12 Q State your full name for the jury, please.

13 A Jessica Marie Nead.

14 Q And where are you an employee, Ms. Nead?

15 A I'm currently employed with Coventry Mortgage.

16 Q And I want to go back in time a little bit to

17 2003, in December, 2003, January of 2004, who was your

18 employer at that time?

19 A Anchor Mortgage.

20 Q And what was your position with them?

21 A I was the operations manager, processor at

22 their Driggs office.

23 Q And how long had you been employed at Anchor

24 Mortgage, roughly?

25 A About a year.

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1 Q And what were your duties and responsibilities

2 there at Anchor Mortgage?

3 A I ran all the day-to-day operations, I took

4 loan applications, I approved borrowers for mortgages.

5 I also processed the paperwork, gathering of the

6 paperwork and monitoring all of the interest rates, as

7 well as doing any kind of lock-in rates, basically the

8 entire process of the mortgage.

9 Q And where do you live now?

10 A In Idaho Falls.

11 Q And you had to speed up here from work?

12 A I did.

13 Q And you lived in 2003, did you live --

14 A In Driggs.

15 Q Okay. Now, you know Mr. Don Harger and Fran

16 Harger seated next to me?

17 A I do.

18 Q Okay. And were you involved with a loan they

19 were looking at with Anchor Mortgage back in 2003?

20 A I was.

21 Q And what was your -- just describe for the jury

22 what your involvement was or your position with

23 respect to them

24 A I would have been considered their loan

25 officer, which basically means that I was in charge of

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**TAB “14”**

1 THE COURT: All right, continuing on the case  
2 of Harger versus Allen [sic]. All of our jurors are  
3 present, attorneys and clients. Mr. Vest is on the  
4 stand undergoing direct.  
5 Mr. Ohman, you may continue.  
6 MR. OHMAN: Thank you very much, Your Honor.  
7 Q (By Mr. Ohman) Mr. Vest, at the time of the  
8 recess I was asking you to address with me an issue  
9 raised by the Plaintiffs in the case in chief  
10 regarding an e-mail in which you used the words  
11 "hardball." During the break we located that exhibit  
12 of the Plaintiffs'. It is No. 46, if you'd be kind  
13 enough to turn to that.  
14 A Okay. Can you tell me what paragraph?  
15 Q I will, sir. Exhibit 46 consists of four  
16 pages. This would be on the fourth of those four  
17 pages. It appears to me to be an e-mail, the top of  
18 which conspicuously has your name, Tony Vest?  
19 A Right.  
20 Q It says from Tony Vest, sent Friday, November  
21 5, 2004. Do you have that one before you?  
22 A Okay. In the reference that is being made, you  
23 may read it, the paragraph in its entirety. The  
24 reference is in that first paragraph beginning "Bill."  
25 Q It starts off and says, "Bill, I agree with

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1 your position. However, the main punch list items  
2 will be outside work which will be done in May and  
3 well beyond the 90 days." They had wanted everything  
4 done within 90 days, but you can't do that in January,  
5 the landscape done. "I will also not accept language  
6 that says to their satisfaction." That's kind of hard  
7 to meet sometimes. "I will accept floor plans and  
8 specs. Any guarantee you will simply state that the  
9 cabins are built to industry standards and that the  
10 warranty period is one year. Fixtures, appliances,  
11 windows, furnaces, fireplaces, etc., will be covered  
12 by manufacturer's warranty, no 200 percent. We play  
13 hardball on these units. If they insist on new terms,  
14 give them their money back."  
15 The hardball refers to negotiating new terms.  
16 It does not mean we're trying to treat somebody  
17 unfairly. It means we will not -- a point in time on  
18 December 20th in which it's no longer time to  
19 negotiate new terms, so we play hardball on the terms.  
20 We've done it, let's finish it, let's go.  
21 Q Thank you, sir. We talked briefly earlier  
22 about punch lists, change orders, upgrades. Generally  
23 speaking, I'd ask you also whether the purchase price  
24 in your opinion is a material term to a contract?  
25 You've indicated yes. I want to use an example why it

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1 becomes such. Would you turn to Exhibit 29? It  
2 should be, sir, and please confirm it, a September 16,  
3 2003, change order form, Plaintiffs' exhibit.  
4 A That's correct.  
5 Q Have you that before you?  
6 A I think.  
7 Q That document, have I correctly identified it  
8 as a change order?  
9 A That's correct.  
10 Q And that change order indicates an amount of  
11 \$19,201; correct?  
12 A Correct.  
13 Q And that represents requests made by or changes  
14 made by the Hargers at that time?  
15 A Yes. Requests that the Hargers agreed to by  
16 both me and Donald Harger.  
17 Q And how would that affect negotiations  
18 regarding a purchase price?  
19 A You know, it wouldn't because the normal  
20 handling of the change because when you have a change  
21 order you normally ask them somebody pay for the  
22 change order to their advantage at that time. The  
23 reason we do that is your change order may be  
24 something that might not add value to the home. So if  
25 you were to fail to close what you cause to the spent

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1 on the home might not be recoverable. So  
2 traditionally what you do, and we do today, is if  
3 somebody asks for a change order you have to pay for  
4 it then. If you wait for the closing to pay for the  
5 change order, then you put the builder at risk if you  
6 don't close -- if you build something it might be  
7 something somebody else might not want. We actually  
8 invoiced this change over to the Hargers and they said  
9 no, they wanted it folded into the contract price so  
10 it became part of the contract price.  
11 Q Mr. Vest, you were of course present in the  
12 courtroom as Mr. Harger returned to the witness stand  
13 to talk about what he calls his damages; were you not?  
14 A Yes, I was.  
15 Q And he indicated that they wanted such things  
16 as the fair market value plus the appreciated value,  
17 or to include the appreciated value and the lease back  
18 amounts and the rental amounts, tax consequences, and  
19 I may have thought of others. You heard those  
20 requests; did you not?  
21 A I did.  
22 Q And are those appropriate damage requests?  
23 A No. Even if you had a contract (inaudible) if  
24 we were, you'd have to net out the costs you would  
25 have had. In other words, somebody's got to be paying

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1 mortgages through this period of time, so that's a net  
2 cost. The initial cost that he paid on the down  
3 payment has to come out. The utilities during that  
4 period of time, the taxes during that period of time  
5 and all normal expenses of owning a house,  
6 particularly if you don't live in it, are investment  
7 expenses that go against any costs that you have. So  
8 if I'm figuring out how much profit I'm going to make  
9 on an investment, I've got to include in there my  
10 costs incurred during the time that I own the  
11 investment. So there's a lot of costs that are  
12 involved that have to be netted out of there.

13 Q Thank you, sir. Perhaps drawing my examination  
14 to a close, we have talked generally throughout the  
15 trial so far of the original contemplated contracts  
16 and those that were being negotiated but never  
17 achieved. Compare them, if you will. How would the  
18 contemplated contract as being demanded by the Hargers  
19 at the end of their negotiations compare with those  
20 that were their initial agreement?

21 A You almost have to go all the way back to the  
22 beginning and look at all the things that were asked  
23 for in the original contract and I made the notes from  
24 the basic contract. They had a two year lease back  
25 agreement. They had a \$16,000 membership, which had

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1 to be purchased by August the 1st, 2003. The buyer  
2 pays the golf dues, the buyer pays taxes. Teton  
3 Springs paid for normal kitchen appliances, not washer  
4 and dryer. They got T and G in the ceiling and slab  
5 granite in the kitchen only.

6 Q What's T and G?

7 A I'm sorry. Tongue and groove ceilings, wood  
8 ceilings.

9 Q Thank you.

10 A They had a rental program guaranteed of \$6,000  
11 per quarter or 50 percent of the gross and not both  
12 and they had a standard warranty. What dribbled in  
13 over time was a ten percent rebate which was not in  
14 the original contract. We were offering that to other  
15 people, but again, we have different deals based on  
16 what excites people to close and we make sure you  
17 keep. We don't give a deal to everybody or you'd give  
18 everything away and you wouldn't make any money. We  
19 have to pay our bills.

20 They had asked for a hold on that \$16,000 golf  
21 membership for three years rather than pay it on  
22 August the 1st. They had also asked that they not be  
23 required to pay the hook-up fees, which at that time  
24 were not priced in the cabin, that was \$8,500, money  
25 we paid to the sewer company here in Victor and to the

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1 telephone company and so forth. They'd asked for one  
2 closing instead of the two closings, which meant we  
3 didn't get our \$200,000 but instead got \$126,940 a  
4 month later. They asked for the additional 50 percent  
5 sharing of rental proceeds even though they were going  
6 to get the \$2,000 a month -- or \$2,000 a quarter, and  
7 all this stuff we gave them.

8 They asked for one free year of golf membership  
9 dues based on bringing their friends to buy a cabin.  
10 Normally we don't do that until somebody's activated  
11 their golf membership. In other words, they have to  
12 be a member, but we gave them that. They asked for a  
13 1031 exchange, that was no problem, and then they  
14 reneged on the price that they had signed with me on.  
15 They asked for a washer and dryer, they asked for a  
16 five-year warranty, they asked for three years on  
17 appliances.

18 So it just -- the original contract just seemed  
19 to go away and they just thought -- I guess they  
20 thought they didn't really have a contract, they could  
21 just keep negotiating and then when we had to start  
22 over again at the end for a contract, we realized we  
23 had really never had an understanding at the beginning  
24 of this process.

25 Q Mr. Vest, during the entire proceeding, from

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1 the first time you'd met the Hargers, Teton Springs,  
2 not you personally, until the time you determined  
3 there was no meeting of the minds, were you  
4 negotiating in good faith?

5 A Absolutely.

6 Q Did you want this deal to result?

7 A We did.

8 Q Were you disappointed when it did not result?

9 A We were more than disappointed, we were  
10 scurrying around.

11 MR. OHMAN: Thank you, sir. I would submit the  
12 witness for cross examination.

13 THE COURT: Thank you. Mr. Williams?

14 MR. WILLIAMS: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. WILLIAMS:

17 Q Mr. Vest, the last question from Counsel was  
18 did you in preparing the original to what the Hargers  
19 wanted in the end that everything had changed  
20 dramatically and you listed all the points in how they  
21 changed; correct?

22 A Correct.

23 Q What were you referring to by the original  
24 agreement?

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